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| <p style="text-align: right;">Page 1</p> <p style="text-align: center;">ROUGH DRAFT TESTIMONY OF KEITH ALLRED TAKEN ON 10/25/2012</p> <p style="text-align: center;">THE FOLLOWING IS A ROUGH, UNEDITED TRANSCRIPT</p> <p>By receiving this unofficial draft transcript, you are agreeing to purchase the certified transcript of this matter when it is prepared by the court reporter.</p> <p>This unofficial draft transcript is provided to you solely as a litigation support tool for use in-house by you, other members of your staff, associate counsel, paralegals, or expert consultants. We agree to provide this service to you with the explicit understanding that you will in no way make it available, in whole or in part, in any form, to anyone else.</p> <p>This transcription has been neither checked nor proofread. It is a rough draft, not a certified transcript. The unofficial draft transcript may contain computer-generated mistranslations of stenotype code resulting in</p> | <p style="text-align: right;">Page 3</p> <p>1 the in-house attorney.</p> <p>2 Q. And so professional services is a way of</p> <p>3 referring to legal services?</p> <p>4 A. No. It would be something I could use if</p> <p>5 I was communicating with anyone about any matter</p> <p>6 that didn't have anything specifically to do with,</p> <p>7 for instance, making a crown, some kind of</p> <p>8 business matter. But not necessarily a legal</p> <p>9 matter.</p> <p>10 Q. Okay. Is your title also general</p> <p>11 counsel?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Do you have any other titles other</p> <p>14 than director of professional services and general</p> <p>15 counsel?</p> <p>16 A. I'm the secretary.</p> <p>17 Q. Any other titles?</p> <p>18 A. No.</p> <p>19 Q. Have you ever been deposed before?</p> <p>20 A. No.</p> <p>21 Q. Let me go over a few ground rules about</p> <p>22 the deposition process here and help us understand</p> |
| <p style="text-align: right;">Page 2</p> <p>1 nonsensical word combinations or untranslated</p> <p>2 symbols which cannot be deciphered by</p> <p>3 non-stenotypists. Corrections will be made in the</p> <p>4 preparation of the certified transcript resulting</p> <p>5 in differences in page and line numbers,</p> <p>6 punctuation, and formatting.</p> <p>7 ///</p> <p>8 ///</p> <p>9 ///</p> <p>10</p> <p>11 ** WITNESS WAS SWORN **</p> <p>12 BY MR. JANKOWSKI:</p> <p>13 Q. Good morning. My name, again, is David</p> <p>14 Jankowski. I'm an attorney representing Keating</p> <p>15 dental arts, the defendant in this lawsuit. Could</p> <p>16 you please state your name for the record?</p> <p>17 A. Keith Allred.</p> <p>18 Q. And Glidewell Laboratories is your</p> <p>19 current employer; correct?</p> <p>20 A. Yes.</p> <p>21 Q. What's your current title?</p> <p>22 A. Director of professional services. Also</p> | <p style="text-align: right;">Page 4</p> <p>1 what's going to happen today.</p> <p>2 First of all, do you understand the oath</p> <p>3 that the court reporter just administered to you?</p> <p>4 A. Yes.</p> <p>5 Q. Although this deposition is being taken</p> <p>6 in a conference room in the law offices of Knobbe,</p> <p>7 Martens, Olson & Bear in Irvine, California, it</p> <p>8 has the same force and effect as if you were</p> <p>9 testifying in a court of law before a judge. Do</p> <p>10 you understand that?</p> <p>11 A. Yes.</p> <p>12 Q. I'm going to be asking you questions and</p> <p>13 up provide answers to my questions. You must</p> <p>14 answer truthfully do you understand that?</p> <p>15 A. Yes.</p> <p>16 Q. This deposition is being by the court</p> <p>17 reporter. Spoken words rather than a nod or other</p> <p>18 knob verbal response do you understand?</p> <p>19 A. Thumbs up.</p> <p>20 Q. Please wait until I've completed a</p> <p>21 question because the court reporter cannot capture</p> <p>22 what we say if we talk over one another. Okay?</p> |

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| <p style="text-align: right;">Page 5</p> <p>1 A. Okay.</p> <p>2 Q. If I ask I question and it is unclear to</p> <p>3 you in this sway, please let me know and I'll try</p> <p>4 to address it. If you do not ask for</p> <p>5 clarification, I will assume you understand what I</p> <p>6 am asking. Did you understand?</p> <p>7 A. Yes.</p> <p>8 Q. From time to time your attorney</p> <p>9 Mr. Tachner may be stating objections, for the</p> <p>10 record. Unless he instructs you not to answer a</p> <p>11 question, you must still answer my question. Do</p> <p>12 you understand that?</p> <p>13 A. Yes.</p> <p>14 Q. If you would like to take a break</p> <p>15 innocent during the deposition, simply say so and</p> <p>16 we'll take a break at the next convenient stopping</p> <p>17 point. Is that fine?</p> <p>18 A. That's good.</p> <p>19 Q. I do request we not take breaks while a</p> <p>20 question is pending.</p> <p>21 A. Okay.</p> <p>22 Q. Are you taking any prescription</p> | <p style="text-align: right;">Page 7</p> <p>1 A. Yes.</p> <p>2 Q. And you're here to testify today to also</p> <p>3 help us out here understand information associated</p> <p>4 with these topic. You're familiar with that?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And you know what? I was going to</p> <p>7 did this later but let's go over your background a</p> <p>8 little bit before we get into this.</p> <p>9 You're an attorney; correct?</p> <p>10 A. Yes.</p> <p>11 Q. Can you briefly describe what is your</p> <p>12 educational background?</p> <p>13 A. I went to San Diego State university and</p> <p>14 the University of San Diego.</p> <p>15 Q. And so you got your undergraduate degree</p> <p>16 at San Diego State?</p> <p>17 A. Yes.</p> <p>18 Q. And what was your major?</p> <p>19 A. Finance and business law and a master's</p> <p>20 degree in business administration.</p> <p>21 Q. So you have two separate degrees from San</p> <p>22 Diego State, a bachelor's and an MBA?</p> |
| <p style="text-align: right;">Page 6</p> <p>1 medication or other drugs that may impair your</p> <p>2 ability to testify truthfully today?</p> <p>3 A. No.</p> <p>4 Q. Is there any reason you can't give</p> <p>5 truthful testimony here today?</p> <p>6 A. No reason.</p> <p>7 Q. Okay. Let me just put in front of you</p> <p>8 what has been previously marked as Exhibit 2.</p> <p>9 I'll have you take a quick look at that document.</p> <p>10 Mr. Allred, have you seen this document before?</p> <p>11 A. Corrected notice of deposition?</p> <p>12 Q. Correct.</p> <p>13 A. Is this for the. Most knowledgeable?</p> <p>14 Q. Well, basically. It's a deposition</p> <p>15 pursuant to fed rule of civil procedure 30(b)(6).</p> <p>16 So it's a deposition of Glidewell, the entity, and</p> <p>17 Glidewell designates one or more persons to</p> <p>18 provide testimony on the topics. I understand</p> <p>19 that, yes.</p> <p>20 Q. And, in fact, you're ware that Mr. Jim</p> <p>21 Shuck gave testimony on some of these topics a few</p> <p>22 weeks ago; correct?</p> | <p style="text-align: right;">Page 8</p> <p>1 A. Yes.</p> <p>2 Q. And what year did you receive your</p> <p>3 bachelor's degree?</p> <p>4 A. '72.</p> <p>5 Q. The early 1970s?</p> <p>6 A. Yes.</p> <p>7 Q. And then do you recall what year you</p> <p>8 received your MBA?</p> <p>9 A. Ultimately I will. Let me see. I'm</p> <p>10 going to go 057. It strikes me as right.</p> <p>11 Q. You didn't go straight through and get an</p> <p>12 MBA right after your undergraduate degree?</p> <p>13 A. Not immediately. I didn't just go to</p> <p>14 school full-time either.</p> <p>15 Q. Okay. When did you start studying at San</p> <p>16 Diego State?</p> <p>17 A. 1969.</p> <p>18 Q. When did you receive your law degree from</p> <p>19 University of San Diego?</p> <p>20 A. It was December of '81, I believe, is</p> <p>21 when it would be on their orders or February of</p> <p>22 '82, something like that. I remember the bar in</p> |

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| <p style="text-align: right;">Page 9</p> <p>1 February of '82. I know that.</p> <p>2 Q. Now, JD degrees aren't normally conferred</p> <p>3 in December time of year. Were you on a different</p> <p>4 program?</p> <p>5 A. I'm not quite sure. It seems like I got</p> <p>6 it in '81 and I got continual communications from</p> <p>7 them and it seems like I'm under the heading of</p> <p>8 '82. I'm not quite sure how they figure that.</p> <p>9 Q. When did you start studying law at</p> <p>10 University of San Diego?</p> <p>11 A. 1979 in their evening program.</p> <p>12 Q. Okay.</p> <p>13 A. I was employed full-time.</p> <p>14 Q. Where were you employed at that time?</p> <p>15 A. General dynamics at that time.</p> <p>16 Q. I actually used to work at general</p> <p>17 dynamics down in San Diego.</p> <p>18 A. I worked in Kearny Mesa.</p> <p>19 Q. That was while I was in college. What</p> <p>20 was your position at general dynamics?</p> <p>21 A. Master scheduler.</p> <p>22 Q. What time period did you work at general</p> | <p style="text-align: right;">Page 11</p> <p>1 performance?</p> <p>2 A. Not really, no. It's performance</p> <p>3 statistics of the machinery and equipment and the</p> <p>4 services provided.</p> <p>5 Q. Okay.</p> <p>6 A. More of an electronic thing.</p> <p>7 Q. Okay. And over what time period did you</p> <p>8 work at Pacific Telephone?</p> <p>9 A. I think that was a couple years.</p> <p>10 Q. So you started there in the mid-'70s?</p> <p>11 A. Yeah.</p> <p>12 Q. And did you work somewhere before Pacific</p> <p>13 Telephone?</p> <p>14 A. I did, yeah.</p> <p>15 Q. Where did you work?</p> <p>16 A. I worked at La Jolla village apartment.</p> <p>17 Q. What did you do there?</p> <p>18 A. I was an assistant manager.</p> <p>19 Q. And do you recall what time period that</p> <p>20 you worked at La Jolla village apartments?</p> <p>21 A. I think I started about 1971. I'm not</p> <p>22 sure exactly.</p> |
| <p style="text-align: right;">Page 10</p> <p>1 dynamics?</p> <p>2 A. Let's see, I guess that was till -- well,</p> <p>3 before '79. I don't know exactly when and until</p> <p>4 about '81 or so.</p> <p>5 Q. So about three years?</p> <p>6 A. Yeah.</p> <p>7 Q. And did you work somewhere before general</p> <p>8 dynamics?</p> <p>9 A. Yes.</p> <p>10 Q. Where did you work before general</p> <p>11 dynamics?</p> <p>12 A. Immediately before that I think it would</p> <p>13 be Pacific Telephone. Downtown San Diego.</p> <p>14 Q. What was your position at Pacific</p> <p>15 Telephone?</p> <p>16 A. It was statistical clerk in the division</p> <p>17 office there.</p> <p>18 Q. What does a statistical clerk do?</p> <p>19 A. It's kind of hard to describe, but it was</p> <p>20 pretty much keeping performance statistics on all</p> <p>21 the central offices of California.</p> <p>22 Q. And so statistics on financial</p> | <p style="text-align: right;">Page 12</p> <p>1 Q. So that's while you were still in</p> <p>2 college?</p> <p>3 A. Yeah, it's what I was doing during the</p> <p>4 days and nights. It was kind of a flexible</p> <p>5 schedule. Mainly it was nighttime but maybe one</p> <p>6 or two days during the week during the day.</p> <p>7 Q. And so you graduated from San Diego State</p> <p>8 with a degree, I think you said, in business</p> <p>9 finance?</p> <p>10 A. It's called finance and business law.</p> <p>11 That's the name of the degree.</p> <p>12 Q. Finance and business law. Okay. And</p> <p>13 so -- and the job you had at La Jolla village</p> <p>14 apartments was not related to the finance side of</p> <p>15 it, was it?</p> <p>16 A. No, it was property management.</p> <p>17 Q. And you went straight from La Jolla</p> <p>18 village apartments to Pacific Telephone?</p> <p>19 A. Uh-huh.</p> <p>20 Q. And straight from Pacific Telephone to</p> <p>21 general dynamics?</p> <p>22 A. Yes.</p> |

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| <p style="text-align: right;">Page 13</p> <p>1 Q. That gets us up to about 1981. Where did 2 you work after general dynamics? 3 A. I had some part-time jobs because I 4 switched over to full-time daytime in the law 5 school. So I had a lot of different things. 6 Account temps would be one of them. 7 Q. When after general dynamics did you first 8 have full-time employment with somebody? 9 A. That would be -- well, I did work 10 full-time as a temporary basis even though it was 11 through. Temporary was really contractors. So 12 there was several of those. You mean for a 13 company to actually employee me as an employee. 14 Q. Correct. 15 A. I think that would probably be coal teen. 16 Q. Can you spell that? 17 A. C-o-l-t-e-n-e, coal teen, Inc. 18 Q. And what's the business of coal teen, 19 Inc.? 20 A. They were in the business of 21 manufacturing dental materials primarily 22 impression material at the time I started there is</p> | <p style="text-align: right;">Page 15</p> <p>1 A. I opened up my own law practice. 2 Q. Where was your law practice located? 3 A. I was just out of my own home. 4 Q. What city? 5 A. In Cardiff, California. 6 Q. And so that would have been in 1990? 7 A. Yeah. 8 Q. What kind of law did you practice? 9 A. Condominium law. 10 Q. Why did you transition from coal teen, 11 Inc., to your own law practice at that time? 12 A. Well, it worked out pretty good. That 13 business sold in a way. Actually it was the 14 reverse way around. Coal teen purchased whale 15 dental and whale dental sells through dealers and 16 they eliminated the company that was essentially 17 selling direct, and it was a chance to start 18 something new during the depression. 19 Q. How long were you working as your own law 20 practice (*** GET SPELLING ***)? 21 A. Until 1996. 22 Q. And that whole time you were practicing</p> |
| <p style="text-align: right;">Page 14</p> <p>1 what they were known for. They're a Swiss 2 company, and they were selling direct in the 3 United States; so it was something new for them. 4 Q. What was your position at coal teen, 5 Inc.? 6 A. I was the controller. 7 Q. And what year did you begin working at 8 coal teen? 9 A. 1985. 10 Q. And how long did you work at coal teen, 11 Inc.? 12 A. Till 1990. 13 Q. And you were the controller that whole 14 time? 15 A. No, at the end I was the president of 16 that company. 17 Q. And when did your title change to 18 president? 19 A. I guess about 1989 or maybe '88. I'm not 20 quite sure. 21 Q. And when your employment at coal teen, 22 Inc., ended, where did you go from there?</p> | <p style="text-align: right;">Page 16</p> <p>1 condominium law? 2 A. Well, it's one of my specialties, but 3 there was also property law. I handled a divorce, 4 brought a lawsuit, in and that, quite a few 5 different things. 6 Q. I asked you earlier if you've ever been 7 deposed. I guess I should ask you have you taken 8 depositions of witnesses? 9 A. Yeah. 10 Q. How many depositions have you taken? 11 A. I would say I've only taken one. I've 12 participated in more than one, but I remember 13 asking questions in one. 14 Q. And the other ones you were defending 15 witnesses? 16 A. I was there with -- representing a 17 company as the company's attorney that had hired 18 within attorney to do something or another. I 19 don't know that we were defendant or plaintiff. 20 I'd have to think about that. 21 Q. But you were participating in the 22 deposition?</p> |

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1 A. Yes.

2 Q. Okay. How many depositions have you

3 participated in?

4 A. Oh, probably more than five.

5 Q. Okay. Was that back in this time frame

6 in the 1990s?

7 A. No, I was say since '96. I was never

8 part of any depositions prior to working for the

9 company I work for now.

10 Q. Okay. Is part of your law practice

11 between 1990 and '96 you weren't involved in

12 depositions then?

13 A. No.

14 Q. So you mentioned condominium law,

15 property law, family law. Any other areas of law

16 that you practiced?

17 A. Well, I guess I can list them all as part

18 of that. Condominium law, for instance, is

19 handling liens. I've actually filed foreclose

20 you're on properties, contract matters. That was

21 also a realtor. I had a broker's license.

22 Q. And what did you do in 1996 when you --

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1 well, let me ask you in 1996 did you stop that law

2 practice?

3 A. Yes.

4 Q. And what happened at that point?

5 A. Well, I was hired full-time basis as

6 director of professional services.

7 Q. By Glidewell?

8 A. Yes.

9 Q. Okay. And so you've been working

10 consistently from 1996 until today at Glidewell as

11 the director of professional services?

12 A. Yes.

13 Q. Okay.

14 A. And before that I did a few things for

15 them too. Filed a trademark.

16 Q. Okay. Has your title been general

17 counsel the whole time as well?

18 A. I don't know that it's really been called

19 that from the very beginning though I've been an

20 attorney there from the very beginning.

21 Q. Okay. So at least at some point you took

22 on the title general counsel?

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1 A. Yeah, definitely at some point.

2 Q. How about secretary? When did you take

3 on that title?

4 A. I think that was probably about six years

5 ago.

6 Q. So roughly 2006?

7 A. Uh-huh.

8 MR. TACHNER: Yes? You have to mouth the

9 word.

10 THE WITNESS: Yes.

11 MR. JANKOWSKI: Excuse me. How is it

12 that you first developed a working relationship

13 with Glidewell Laboratories.

14 THE WITNESS: I think the first thing I

15 ever did professionally for Glidewell Laboratories

16 was filing a trademark.

17 BY MR. JANKOWSKI:

18 Q. And when was that?

19 A. Well, it would have been before '96.

20 Q. You don't recall the year, though?

21 A. I don't recall it, but it would be easy

22 to see because I could look up the trademark.

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1 Q. What was the trademark in?

2 A. Play safe was the name.

3 Q. P-l-a-y-s-a-f-e?

4 A. Uh-huh.

5 Q. Is that all as one word?

6 A. Yeah.

7 Q. Okay. Now, you hadn't been practicing

8 trademark law prior to that; is that correct?

9 A. That's true.

10 Q. So how is it you came to be asked by

11 Glidewell to file a strayed mark application?

12 A. Just a well-rounded individual.

13 Q. But how did they find you to do this

14 particular task?

15 A. Well, I know the person that works there

16 in the marketing department.

17 Q. Is that Mr. Shuck?

18 A. Yes.

19 Q. So you had a preexisting relationship

20 with Mr. Shuck that predated the filing of this

21 trademark application?

22 A. Yes. We worked at coal teen together.

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| <p style="text-align: right;">Page 21</p> <p>1 Q. So when you were working at coal teen 2 between 1985 and 1990, ing whether was one of the 3 people you were working with? 4 A. Yeah, for. He was the president of the 5 company then. 6 Q. So you became president of coal teen in 7 or around 1988 or '89? 8 A. Yes. 9 Q. Did you replace Mr. Shuck as president? 10 A. Yes, he left. 11 Q. Where did he go from there? 12 A. PTC, I think. 13 Q. Is that an acronym or what was PTC? 14 A. It stands for something. 15 Q. That's the name of the company? 16 A. Yes. 17 Q. And that's a dental company of some time? 18 A. Yeah, it is. 19 Q. What do they make or sell? 20 A. They were in the business of selling 21 training, and I think they also had a line of 22 artificial teeth from a manufacturer in Europe.</p> | <p style="text-align: right;">Page 23</p> <p>1 Q. Right. Okay. 2 Were there any other projects that 3 Glidewell gave you to work on prior to you 4 beginning employment there in 1996? 5 A. I think there might have been another 6 trademark. 7 Q. Do you recall what the trademark was? 8 A. If it was before that I was actually 9 employed there, it would be Silent Night. That's 10 N-i-t-e. Silent Nite. 11 Q. What goods or services was the mark 12 silent Nite being used by Glidewell for? 13 A. It's a mandibular device and it's for the 14 treatment of snoring and mild to moderate sleep 15 apnea. 16 Q. I think I understand the name. 17 How about play safe? What kind of goods 18 or services is that mark associated with? 19 A. That is a custom fabricated mouth guard. 20 Q. Would that be a mouth guard for use by 21 athletes? 22 A. Yes.</p> |
| <p style="text-align: right;">Page 22</p> <p>1 Q. Okay. So basically what happened at some 2 point prior to 1996 was you received a phone call 3 or some kind of communication from Mr. Shuck 4 asking you to file a trademark on behalf of 5 Glidewell; is that right? 6 A. That's correct. 7 Q. Okay. Had you been working with 8 Mr. Shuck in a professional capacity, a business 9 capacity, prior to joining Glidewell after he left 10 coal teen? 11 A. No. 12 Q. Do you know when Mr. Shuck joined 13 Glidewell? 14 A. I don't. 15 Q. Okay. But it was before you? 16 A. Long time before. I think he's worked 17 there more than 20 years. 18 Q. And Mr. Shuck is the vice president of 19 advertising and marketing; is that right? 20 A. Sales and marketing. 21 Q. Sales and marketing. 22 A. Uh-huh.</p> | <p style="text-align: right;">Page 24</p> <p>1 Q. I think I understand that name as well. 2 Are there any other trademarks that you 3 filed for Glidewell before beginning employment 4 there in 1996? 5 A. I'm not even sure the silent Nite was 6 before. I think it was No. 2. 7 Q. Okay. 8 A. If one comes to me, I'll let you know, 9 but I can't recall right now. 10 Q. Okay. 11 A. There may have been one before I captured 12 possibly. I'm not sure where they fall in the 13 timeline. 14 Q. How many trademarks have you filed for 15 Glidewell? 16 A. Maybe more than 10. 17 Q. Okay. Can you name for me the ones you 18 recall? 19 A. Oh, sure. Well, the three I've 20 mentioned. 21 Q. What was the last one you said? 22 A. Capture.</p> |

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| <p style="text-align: right;">Page 25</p> <p>1 Q. Capture. Okay. What kind of product or 2 services is capture? 3 A. That is polyvinyl impression material. 4 Dental impression material. 5 Q. Okay. What's another one. 6 A. I'll give you a tongue twister. Occlusal 7 glass. I don't know that it was fourth in line, 8 but it's always been easy to remember for me. 9 Q. Occlusal glass? 10 A. Occlusal glass 11 Q. It sounds carry to have glass in your 12 mouth. Can you think of the others? What are the 13 others? 14 A. Oh, sure. Center press. Simply natural 15 dentures. Inclusive. That's more recent. Chair 16 side. I think there's about three more I can't 17 think of. 18 Q. Okay. We're up to eight. That's a 19 pretty good number. 20 Does Glidewell also write on attorneys 21 other than you to file trademarks? 22 A. No.</p> | <p style="text-align: right;">Page 27</p> <p>1 applications that have been filed? 2 A. Well, there's one in Class 10, and 3 there's one in Class 5. Is that what you mean? 4 Q. That's right. 5 A. That's in the United States. 6 Q. Right, right. I'm just asking about the 7 United States. 8 When you say Class 10, what's Class 10? 9 A. That would cover, for instance, a 10 custom-made crown or bridge or inlay or on lay. 11 Q. How about Class 5? 12 A. That would be a material like. In our 13 situation BruxZir block. 14 Q. I think just yesterday I was questioning 15 Mr. Bartolo, and I've also questioned Mr. Carden. 16 It seems like the material that's sold by 17 Glidewell is referred to as blanks. Have you 18 heard it referred to that way? 19 A. Yes. 20 Q. So that's what Class 5 is referring to, 21 the blanks material; correct? 22 A. Yes.</p> |
| <p style="text-align: right;">Page 26</p> <p>1 Q. One trademark I guess at issue is going 2 to be BruxZir, correct? That's the reason we're 3 sitting here today. 4 A. Yes. 5 Q. So we can add that to the list as well? 6 A. Definitely. 7 Q. The way I've been referring to 8 Glidewell's mark just as a shorthand just so I can 9 say it in a way that I think everybody can 10 understand it and without having me to spell it 11 out each time is I call it BruxZir with a Z. When 12 I say BruxZir with a Z, I mean Glidewell's mark 13 specifically I mean B-r-u-x-z-i-r? 14 A. Okay. 15 Q. When I say that that's what I'll be 16 referring to? 17 A. Okay. 18 Q. So BruxZir is one of the marks you filed 19 for them? 20 A. Yes. 21 Q. And, in fact, there's at least two 22 filings for BruxZir; correct? Separate trademark</p> | <p style="text-align: right;">Page 28</p> <p>1 Q. Okay? 2 A. And color ants too. 3 Q. So Class 5 would include the color ants? 4 A. Yes. 5 Q. Now, there's also, at least the mark 6 BruxZir has been used by Glidewell for a number of 7 other offerings for sale as well; correct? Like 8 milling machines, for example? 9 A. Yes. 10 Q. That won't fall under a Class 10 or 11 Class 5; correct? 12 A. That's correct. 13 Q. Is there a filing for BruxZir for 14 anything other than Class 10 and Class 5? 15 A. Not yet. 16 Q. Okay. Chair side by the way I think is 17 the name of an internal publication of Glidewell; 18 right? 19 A. That's true. 20 Q. Do you recall what class the mark simply 21 natural dentures is associated with? 22 A. What product is it for?</p> |

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| <p style="text-align: right;">Page 29</p> <p>1 Q. Right.</p> <p>2 A. That was for a denture. They were</p> <p>3 partial. It would be simply natural dentures.</p> <p>4 Q. Does it have -- like I said, Class 5 and</p> <p>5 Class 10 for BruxZir --</p> <p>6 A. That would be Class 10.</p> <p>7 Q. That's Class 10.</p> <p>8 A. Another mark would be BioTemps.</p> <p>9 Q. And what's BioTemps?</p> <p>10 A. That is a custom-made provisional</p> <p>11 restoration.</p> <p>12 Q. Does that mean a restoration that's</p> <p>13 designed to not be permanent?</p> <p>14 A. Correct.</p> <p>15 Q. Is that also in Class 10?</p> <p>16 A. Yes.</p> <p>17 Q. How about occlusal glass? What class</p> <p>18 would that be associated with?</p> <p>19 A. That would be Class 10.</p> <p>20 Q. What product was that?</p> <p>21 A. That was a crown. It was made by fusing</p> <p>22 glass over a metal coping, and it was a particular</p> | <p style="text-align: right;">Page 31</p> <p>1 make either all ceramic or pressed to metal</p> <p>2 ceramic crowns and bridges.</p> <p>3 Q. That's zirconia, in fact; correct?</p> <p>4 A. No, it's ceramic. It's glass.</p> <p>5 Q. This particular one is not zirconia?</p> <p>6 A. No, it's not.</p> <p>7 Q. There is a PrismaTik zirconia, I think,</p> <p>8 associated with Glidewell's products as well;</p> <p>9 correct?</p> <p>10 A. Well, the company is PrismaTik dental</p> <p>11 craft, Inc., and it makes zirconia blocks. So it</p> <p>12 does have the PrismaTik -- well, clinical</p> <p>13 zirconia. I believe we have a trademark on that.</p> <p>14 But that was a product we had, PrismaTik clinical</p> <p>15 zirconia.</p> <p>16 Q. Right. Sometimes called PrismaTik CZ?</p> <p>17 A. And sometimes called PrismaTik CZ,</p> <p>18 correct.</p> <p>19 Q. So Glidewell does have a trademark this</p> <p>20 that?</p> <p>21 A. I don't think we have a trademark in</p> <p>22 that.</p> |
| <p style="text-align: right;">Page 30</p> <p>1 type of metal coping, and it was a particular type</p> <p>2 of glass.</p> <p>3 Q. How about center press? What kind of</p> <p>4 product is that?</p> <p>5 A. It was going to be. It's nothing we ever</p> <p>6 actually marketed. It was going to be a</p> <p>7 nonprecious metal coping system made with powdered</p> <p>8 metal.</p> <p>9 Q. I take it that would be in Class 5?</p> <p>10 A. That would be in Class 5. We also have</p> <p>11 the mark PrismaTik net press, and that's PrismaTik</p> <p>12 with a K.</p> <p>13 Q. So it's P-r-i-s-m-a-t-i-k?</p> <p>14 A. Yes. And we also have PrismaTik</p> <p>15 something press. Thin press.</p> <p>16 Q. I'm sorry. The first PrismaTik press</p> <p>17 was -- can you repeat the name of that?</p> <p>18 A. Well, it's PrismaTik thin press, and it's</p> <p>19 PrismaTik net press.</p> <p>20 Q. Right. Net press. Okay.</p> <p>21 What is the PrismaTik net press product?</p> <p>22 A. That is a block of ceramic that's used to</p> | <p style="text-align: right;">Page 32</p> <p>1 Q. It's just something that's used as a</p> <p>2 name?</p> <p>3 A. That's just a TM. And also has a 510 K.</p> <p>4 Q. So PrismaTik net press and PrismaTik thin</p> <p>5 press, these are going to be Class 5 filings; is</p> <p>6 that correct?</p> <p>7 A. For trademark, yes.</p> <p>8 Q. Yes. In other words, it's materials?</p> <p>9 A. It is.</p> <p>10 Q. Okay. And you just mentioned the use of</p> <p>11 TM. You understand how in trademark law there's</p> <p>12 the circle R concept and the TM concept; correct?</p> <p>13 A. Yes.</p> <p>14 Q. Can you tell me your understanding of</p> <p>15 what those designate?</p> <p>16 A. I know our circle R register are patent</p> <p>17 and register office. (***) CHECK (***)</p> <p>18 Q. What does TM mean?</p> <p>19 A. Wouldn't have to use it, I suppose but</p> <p>20 that's just put out there for the the world the</p> <p>21 fact that it's something the company uses to</p> <p>22 identify its goods. When someone sees that, they</p> |

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| <p style="text-align: right;">Page 33</p> <p>1 know who the source of the product is.</p> <p>2 Q. They know the word the word TM is</p> <p>3 associated with is being associated with the</p> <p>4 company as a trade name of some kind?</p> <p>5 A. Correct.</p> <p>6 Q. What if there's no circle R or no TM?</p> <p>7 Does that designate anything?</p> <p>8 A. It would to me if I saw that and I was</p> <p>9 looking at examples of trademarks to see if other</p> <p>10 people were using it.</p> <p>11 Q. In other words, if there's no circle R or</p> <p>12 no TM, the reader may not interpret that as a</p> <p>13 trade maim at all. Is that fair?</p> <p>14 A. I think I would not necessarily jump to</p> <p>15 that conclusion.</p> <p>16 Q. But they're at least -- if they don't see</p> <p>17 a T -- the point of the TM and circle R is to</p> <p>18 provide notice to the reader; correct?</p> <p>19 A. Correct.</p> <p>20 Q. If it's not there, you're at least not</p> <p>21 getting that notice to the reader?</p> <p>22 A. That's correct.</p> | <p style="text-align: right;">Page 35</p> <p>1 knowledgeable on it. So I just want to point</p> <p>2 those out to you and see what you do know about</p> <p>3 them.</p> <p>4 A. Okay.</p> <p>5 Q. So if you turn actually to topic 8, for</p> <p>6 example, this is one of the topics that Mr. Shuck</p> <p>7 basically directed us to talk to you about. If</p> <p>8 you could just read topic 8 for me.</p> <p>9 A. Okay. I've read that.</p> <p>10 Q. I'm going to be asking you questions to</p> <p>11 get your understanding or knowledge associated</p> <p>12 with topic 8.</p> <p>13 A. Okay.</p> <p>14 Q. Likewise is a similar topic. If you look</p> <p>15 down at No. 10, all communications between</p> <p>16 Glidewell and it lists various other parties,</p> <p>17 certainly at least some of which kind of fall in</p> <p>18 the category of parties that are using brux in</p> <p>19 their names, things like that. I'll be asking</p> <p>20 questions in connection with topic 10?</p> <p>21 A. No. 10, okay.</p> <p>22 Q. And then topic 11 which is</p> |
| <p style="text-align: right;">Page 34</p> <p>1 Q. So let's go back to Exhibit 2 you've got</p> <p>2 in front of you there. If you turn to the fourth</p> <p>3 page of the document, you'll see there's a</p> <p>4 numbered list under topics for examination. Do</p> <p>5 you see that?</p> <p>6 A. Well, these pages aren't numbered but --</p> <p>7 Q. They're not numbered. I apologize.</p> <p>8 A. What number are we starting at, the</p> <p>9 number 1 topics for examination.</p> <p>10 Q. You see the page that says topics for</p> <p>11 examination?</p> <p>12 A. I do.</p> <p>13 Q. You see there's a series of numbered</p> <p>14 topics and it actually goes all the way down to</p> <p>15 No. 21. It spans three pages. Do you see that?</p> <p>16 A. That's what mine has.</p> <p>17 Q. The good news for you is that Mr. Shuck</p> <p>18 provided testimony on most of these topics, and so</p> <p>19 we certainly don't need to go through entire list</p> <p>20 with you. But there were certain topics where</p> <p>21 Mr. Shuck didn't have knowledge and topics where</p> <p>22 he said you were the person who's most</p> | <p style="text-align: right;">Page 36</p> <p>1 representations made to the U.S. Patent and</p> <p>2 Trademark Office regarding basically the trademark</p> <p>3 application BruxZir.</p> <p>4 A. Okay.</p> <p>5 Q. And topic 12 any and all instances of</p> <p>6 actual or parent confusion association between the</p> <p>7 BruxZir mark and the KDZ BRUXER mark. So I'll ask</p> <p>8 you questions about that. Topic 13 also gets back</p> <p>9 to the trademark issue of BruxZir, any searches or</p> <p>10 studies that Glidewell's done in connection with</p> <p>11 that. Finally if you turn the page, you'll see</p> <p>12 topic 20, which is Glidewell's enforcement of the</p> <p>13 BruxZir mark which I believe Mr. Shuck said you'd</p> <p>14 have knowledge on that as well. *** check dock</p> <p>15 ***</p> <p>16 A. No. 20.</p> <p>17 Q. Right.</p> <p>18 A. Which sounds a lot like --</p> <p>19 Q. Yeah, there's overlap.</p> <p>20 A. -- No. 10, I guess.</p> <p>21 Q. Exactly.</p> <p>22 A. Okay.</p> |

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| <p style="text-align: right;">Page 37</p> <p>1 Q. The other area that Mr. Shuck was 2 questioned about where he had trouble answering 3 questions was in connection with financial 4 documents that Glidewell had produced in the case, 5 and I believe you've been designated to provide 6 testimony on the financial documents as well. 7 A. Yes. 8 Q. In that regard we have a deposition of 9 Mr. Sasaki noticed for tomorrow, and your counsel 10 and I have spoken about assuming that you have 11 sufficient knowledge of the documents to testify 12 it knowledgeable about them, we may not need the 13 deposition tomorrow. 14 A. Okay. 15 Q. So we'll see how it goes today. In that 16 regard, why don't we get to those documents 17 because I think I'll credit the court reporter 18 mark as Exhibit 118 what's entitled consolidated 19 financial statements years ended December 31, 20 2010, and 2009 for James R. Glidewell, dental 21 ceramics, Inc. 22 ///</p> | <p style="text-align: right;">Page 39</p> <p>1 document that's the later year, and for the second 2 document that's the earlier year? 3 A. Correct. 4 Q. Okay. And is this a document that you 5 participate in the creation of within Glidewell? 6 A. It is not. 7 Q. But can you confirm for me that this is a 8 business record of Glidewell Laboratories that it 9 creates in the ordinary course of business? 10 A. Yes, and it is audited by a certified 11 public accountant. 12 Q. And, in fact, this is something that is 13 prepared every year by Glidewell, a document like 14 this is prepared every year? 15 A. That is correct. 16 Q. And that's been true ever since you've 17 been at Glidewell? 18 A. That has been true. Not this firm 19 necessarily. 20 Q. When you say this firm, it's -- 21 A. I see it's KSJG. 22 Q. Right. Which is a CPA firm; correct?</p> |
| <p style="text-align: right;">Page 38</p> <p>1 (Exhibit No. 118 was marked for 2 identification.) 3 MR. JANKOWSKI: And then I'll have the 4 court reporter also mark as Exhibit 119 the same 5 document except it's for the years ended 6 December 31, 2011 and 2010. 7 (Exhibit No. 119 was marked for 8 identification.) 9 BY MR. JANKOWSKI: 10 Q. Mr. Allred, if you could briefly look at 11 these exhibits and have you seen Exhibits 118 and 12 119 before? 13 A. Yes. 14 Q. And what are Exhibits 118 and 119? 15 A. They both have the year 2010, and it 16 starts at 2009 and ends in 2011. They are balance 17 sheet and income statements. 18 Q. In fact, each one presents information 19 for two consecutive years; correct? 20 A. Correct. 21 Q. I think what you were just saying was 22 they share the year 2010, one for the first</p> | <p style="text-align: right;">Page 40</p> <p>1 A. Correct. 2 Q. And what's your understanding of the 3 reason why Glidewell creates these documents? 4 A. Well, I think it probably would be 5 required to because it does have loans with banks, 6 but then you'd have to have some kind of document 7 to pay your taxes, of course. 8 Q. So these kind of documents to be used 9 among other things associated with the tax filings 10 of Glidewell; correct? 11 A. Correct. 12 Q. Okay and if turn to the page 2 of the 13 document, I think they're -- if you turn to page 2 14 of both documents? 15 A. Oh, both? 16 Q. You can turn to both because I think they 17 really follow the same structure. And it's 18 actually numbered page 2. It's in a little 19 deeper. You'll see there's a list of? 20 A. Oh, I see that. 21 Q. You'll see on page 2 there's a list of 22 assets. Do you see that?</p> |

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| <p style="text-align: right;">Page 41</p> <p>1 A. I do.</p> <p>2 Q. Okay. And so this is just a page where</p> <p>3 Glidewell is setting forth assets of the entity;</p> <p>4 correct?</p> <p>5 A. Correct. This is a balance sheet.</p> <p>6 Q. Right. And as we've been discussing it's</p> <p>7 a consolidated balance sheet meaning it's showing</p> <p>8 two consecutive years?</p> <p>9 A. Meaning it's actually comprised of</p> <p>10 several different companies.</p> <p>11 Q. Oh, so consolidated in this context means</p> <p>12 multiple companies are being considered?</p> <p>13 A. Correct.</p> <p>14 Q. What companies are being considered in</p> <p>15 this?</p> <p>16 A. Would you like a list of companies?</p> <p>17 Q. Sure.</p> <p>18 A. Okay. Well, the major player in that</p> <p>19 whole thing is James R. Glidewell dental ceramics,</p> <p>20 Inc.</p> <p>21 Q. Okay.</p> <p>22 A. There also would be Prisma-Tik dental</p> | <p style="text-align: right;">Page 43</p> <p>1 company and Smith sterling is the fictitious name</p> <p>2 for that operation. But that actual company is</p> <p>3 Dentalium dental centimeter, Inc. So there is</p> <p>4 (** GET SPELLING **) also a JRG Dentalium, Inc.,</p> <p>5 and that owns pacific edge dental laboratories</p> <p>6 which is also a fictitious name, but it stands for</p> <p>7 actually a company of that name in Mexico.</p> <p>8 Q. And all of these companies are</p> <p>9 encapsulated in the consolidated balance sheets</p> <p>10 here?</p> <p>11 A. And there's more than that even. Those</p> <p>12 are the ones I mainly remember because they</p> <p>13 indirectly related to dental products.</p> <p>14 Q. I see on the page -- it's not numbered</p> <p>15 but page 1, I guess, which has the independent</p> <p>16 auditors report it's signed by the CPA firm, I</p> <p>17 guess, it mentions James R. Glidewell dental</p> <p>18 centimeter, Inc. and subsidiaries. The and</p> <p>19 subsidiaries is basically the laundry list you're</p> <p>20 going through?</p> <p>21 A. Correct. I'm not remembering the name</p> <p>22 right off but there's a company, and I think it's</p> |
| <p style="text-align: right;">Page 42</p> <p>1 craft, Inc.</p> <p>2 Q. Is that with a K?</p> <p>3 A. Yes. And dental craft is one word.</p> <p>4 Q. What other companies?</p> <p>5 A. Riverside dental ceramics, Inc.. new</p> <p>6 west dental laboratories, Inc. Smith sterling</p> <p>7 dental laboratories. That's an Inc. That's a</p> <p>8 Florida company, and new west is an Arizona</p> <p>9 company. The first two or California companies.</p> <p>10 And another California company -- did I say</p> <p>11 Riverside dental ceramics?</p> <p>12 Q. You did.</p> <p>13 A. So that would be three. The first three</p> <p>14 or California companies. A Nevada company is Las</p> <p>15 Vegas digital dental, and that's an LLC. I think</p> <p>16 I'm kind of messing that up a little bit. Smith</p> <p>17 sterling is actually a fictitious name. It's a</p> <p>18 trademark also. But it's a fictitious name for</p> <p>19 Dentalium dental ceramics, Inc., which is the</p> <p>20 Florida company. And that owns LVDDS -- no. Not</p> <p>21 LV. I have to think of the acronym, but it owns a</p> <p>22 company in Costa Rica. So that's a Costa Rican</p> | <p style="text-align: right;">Page 44</p> <p>1 an LLC and its asset is a corporate jet, for</p> <p>2 instance.</p> <p>3 Q. So that would be included in here as</p> <p>4 well?</p> <p>5 A. All the companies would be.</p> <p>6 Q. Now, on the --</p> <p>7 A. There's also a company called IOS that</p> <p>8 would be part of this.</p> <p>9 Q. Okay. And then on that independent</p> <p>10 auditor's report I see there is a board of</p> <p>11 directors that it references of James R. Glidewell</p> <p>12 dental centimeter. Do you see that?</p> <p>13 A. We're still on this page here, the</p> <p>14 independent auditor's report?</p> <p>15 Q. Correct, at the very top. How many</p> <p>16 directors are there on the board of directors? Do</p> <p>17 you know?</p> <p>18 A. There's one.</p> <p>19 Q. The board is just one director?</p> <p>20 A. Yes.</p> <p>21 Q. Is that Mr. James Glidewell?</p> <p>22 A. Yes.</p> |

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| <p style="text-align: right;">Page 45</p> <p>1 Q. I bet he's the chair too?</p> <p>2 A. Chairman of the board and the president</p> <p>3 of the company and the CEO.</p> <p>4 Q. Okay. And you obviously work very</p> <p>5 closely with Mr. Glidewell; correct?</p> <p>6 A. I do as much as all his managers do.</p> <p>7 Q. I wasn't going to put the org chart in</p> <p>8 front of you. I've put it in front of so many</p> <p>9 witnesses I'm tired of seeing it. Mr. Glidewell</p> <p>10 is on the top and there's a number of people</p> <p>11 underneath him like Mr. Shuck and yourself;</p> <p>12 correct?</p> <p>13 A. Correct. 3300 employees the last number</p> <p>14 I remember.</p> <p>15 Q. How many employees were there when you</p> <p>16 started in '96? Do you recall?</p> <p>17 A. I don't recall how many, but I think I</p> <p>18 was like the 700th person hired I don't know how</p> <p>19 many left before that.</p> <p>20 Q. So it's grown pretty significantly since</p> <p>21 1996 and 2012?</p> <p>22 A. It has.</p> | <p style="text-align: right;">Page 47</p> <p>1 A. They're both note 8.</p> <p>2 Q. Right. Note 8. Is it fair to say that</p> <p>3 Glidewell is involved in litigation pretty much</p> <p>4 every year of its existence?</p> <p>5 A. No, that wouldn't be correct.</p> <p>6 Q. That would not be correct? But it was</p> <p>7 true since 2009?</p> <p>8 A. Definitely true since 2009.</p> <p>9 Q. Do you recall what litigation would be</p> <p>10 associated with note 8 in Exhibit 118?</p> <p>11 A. I do. It's the only thing that it could</p> <p>12 have been, and that would have been a lawsuit</p> <p>13 brought against Glidewell Laboratories by a</p> <p>14 Pennsylvania doctor named Dr. Deep.</p> <p>15 Q. How is his name spelled?</p> <p>16 A. Deep. It's her. D-i-p-i-e-t-r-o.</p> <p>17 Q. That was the only lawsuit you recall?</p> <p>18 A. No. There would be another one. I'm not</p> <p>19 exactly sure of the timing, but I'm sure it would</p> <p>20 have to be somewhere around that period, and it</p> <p>21 was a lawsuit brought on behalf of a plaintiff tan</p> <p>22 Nguyen. It was a labor action.</p> |
| <p style="text-align: right;">Page 46</p> <p>1 Q. And it's still growing today?</p> <p>2 A. It is.</p> <p>3 Q. In fact, even looking at the numbers and</p> <p>4 the, you know, in the documents Exhibits 118 and</p> <p>5 119, they show growth from 2009 to 2010 to 2011 of</p> <p>6 the company as a whole. Is that accurate?</p> <p>7 A. That's correct.</p> <p>8 Q. And if you turn to the last page of</p> <p>9 Exhibit 118 -- actually go one more page back.</p> <p>10 A. You mean the very last page?</p> <p>11 Q. Yeah, there you go. I see there's a</p> <p>12 note 8 associated with this statement, and it</p> <p>13 makes a referencing to certain litigation arising</p> <p>14 in the normal course of its business. Do you see</p> <p>15 that?</p> <p>16 A. I do.</p> <p>17 Q. And if you look in the last page of</p> <p>18 Exhibit 119, you'll see a similar statement is in</p> <p>19 there as well. It doesn't identify what the</p> <p>20 litigation is.</p> <p>21 A. Oh, I see that, yeah. Note 8?</p> <p>22 Q. Right.</p> | <p style="text-align: right;">Page 48</p> <p>1 Q. So tan Nguyen was an employee?</p> <p>2 A. Yes. It's Nguyen. I think it starts</p> <p>3 with an H, not the N.</p> <p>4 Q. Oh, how is that name spelled?</p> <p>5 A. It's not easy to remember. I I had it's</p> <p>6 H-u-y-e-n.</p> <p>7 Q. Do you recall what the resolution of the</p> <p>8 lawsuit was with employee Huyen?</p> <p>9 A. I pretty much me to everything that's</p> <p>10 happened, and I wouldn't call it a resolution.</p> <p>11 I'd say it was an ongoing thing.</p> <p>12 Q. Is it still ongoing today?</p> <p>13 A. It is.</p> <p>14 Q. Oh, it is.</p> <p>15 A. Yes.</p> <p>16 Q. Okay. How about the lawsuit with -- I</p> <p>17 can't pronounce the name but the Pennsylvania --</p> <p>18 A. Deep?</p> <p>19 Q. Yeah, the Pennsylvania doctor.</p> <p>20 A. That's an odd one. That was the longest</p> <p>21 lawsuit in history, I think, for me and it still</p> <p>22 is not over even though it may actually be when I</p> |

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1 look back a couple years from now. It's just gone
2 dead.
3 Q. So the lawsuit is still in existence?
4 A. Yes.
5 Q. What's the nature of that lawsuit?
6 A. She had some failed crowns, and she
7 decided that the laboratory somehow had given her
8 some crowns that were going to fail.
9 Q. So some kind of claim of defective
10 product?
11 A. Exactly.
12 Q. Okay. Now, Glidewell sells a lot of
13 crowns?
14 A. True.
15 Q. Do you have a sense of how many crowns a
16 year Glidewell sells?
17 A. Yeah. Well, I should back up. I don't
18 know exactly how many crowns, but we think in
19 terms of units.
20 Q. Right.
21 A. And that could be more than crowns. Even
22 a denture could be a unit. So you're looking at

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1 about 50,000 a month.
2 Q. So more than half a million units a year;
3 correct?
4 A. Yes.
5 Q. And Glidewell puts a lot of effort into
6 quality control to make sure they're not getting
7 lawsuits like this one from the Pennsylvania
8 doctor?
9 A. Yes. And, in fact, it started as a gripe
10 about the specific material that we had used and
11 morphed into a lawsuit against the lab for having
12 made an inferior crown.
13 Q. Are there any other lawsuits you can
14 think of since 2009?
15 A. I don't think there are any others.
16 Q. And Glidewell does not get sued for
17 defective crowns very often. Is that fair?
18 A. Not very often. I would know of every
19 instance, and it's not very often, but there were
20 some when I first started working there. Didn't
21 really have to do with the laboratory. It had to
22 do with the material, manufactured material.

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1 Q. Because Glidewell would buy the material
2 from another party and make crowns with it and
3 sell it to dentists; right?
4 A. Correct.
5 Q. What's the material at issue, if you
6 know, in this lawsuit with this Pennsylvania
7 doctor?
8 A. I do know. It was a material from
9 Ivoclar, and it was called design which is spelled
10 odd. It's a small D and a dash and a capital
11 S-i-g-n. IPS design. It's a glass.
12 Q. So it would be capital I, capital P,
13 capital S and space lower case D, hyphen capital
14 S-i-g-n?
15 A. Correct.
16 Q. That's from Ivoclar?
17 A. Yes. It's a powdered centimeter that's
18 used to overlay a metal coping to make a PFM.
19 Q. As I said, Exhibit 119 has that same
20 note 8 about litigation and it sounds like the
21 same litigation was still going on. So guess the
22 notes here in note 8 in the two exhibits here in

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1 front of you Exhibit 118 and 119 are referring to
2 the same litigation. Is that fair?
3 A. Yeah.
4 Q. And 119 can include the present
5 litigation?
6 A. I'm trying to think of the dates on that.
7 Q. This lawsuit was filed, I believe, in
8 2011.
9 A. Okay. I guess it would include this one
10 too, then.
11 Q. When the they're preparing a document
12 like this, would your office be consulted to
13 contribute to review language, things -- this
14 refers to litigation. I assume you're office
15 handles -- manages internally litigation?
16 A. I have done that before, and I think I do
17 remember our attorney in Pennsylvania having
18 written something about that. I don't remember if
19 Leonard had been asked to write anything about
20 that. I know that they do get opinions of
21 attorneys when they do this.
22 Q. Now, who works underneath you, if any,

| Page 53 | Page 55 |
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| <p>1 within Glidewell --</p> <p>2 A. No one.</p> <p>3 Q. In terms of the office of the general</p> <p>4 counsel, it's basically you. Is that fair?</p> <p>5 A. That's correct.</p> <p>6 Q. Okay. Let me put in front of you -- you</p> <p>7 can put these documents aside.</p> <p>8 MR. TACHNER: By the way David, as soon</p> <p>9 as you decide one way or the other with respect to</p> <p>10 Sasaki, would you let us know so we could tell him</p> <p>11 whether he's free tomorrow or has to be here?</p> <p>12 MR. JANKOWSKI: Right. And that's why</p> <p>13 I'm going through these now so we'll know earlier</p> <p>14 rather than the end of the day.</p> <p>15 MR. TACHNER: Thank you.</p> <p>16 BY MR. JANKOWSKI:</p> <p>17 Q. I'm going to hand you what has previously</p> <p>18 been marked as Exhibit 37. This is from the Shuck</p> <p>19 deposition. Mr. Allred, what this appears to be</p> <p>20 me anyway is an assemblage of documents produced</p> <p>21 by Glidewell in this case. You'll see how it's</p> <p>22 got the little numbers at the bottom. The first</p> | <p>1 sent to labs and things being sent to doctors. Do</p> <p>2 you see that?</p> <p>3 A. I do.</p> <p>4 Q. What's your understanding of what's being</p> <p>5 shown here? Can you tell?</p> <p>6 A. Based on what I think I'm looking at, I</p> <p>7 would think I know what it's talking about. And</p> <p>8 it's talking about Prismatic zirconia blanks.</p> <p>9 Well, it says blocks.</p> <p>10 Q. Why do you say Prismatic? I would think</p> <p>11 it's BruxZir blanks.</p> <p>12 A. That's correct. Prismatic BruxZir</p> <p>13 blanks.</p> <p>14 Q. Oh, sewer using -- so you're using the</p> <p>15 word Prismatic with the BruxZir product as well?</p> <p>16 A. (No verbal response.)</p> <p>17 Q. Okay. So -- or I guess another way we</p> <p>18 can say it is BruxZir zirconia blanks?</p> <p>19 A. Correct.</p> <p>20 Q. And, in fact, is the BZ that's referenced</p> <p>21 there a shorthand reference to BruxZir?</p> <p>22 A. It's got to be.</p> |
| Page 54 | Page 56 |
| <p>1 page as GL 227?</p> <p>2 A. Right. I see that.</p> <p>3 Q. So that's a production number that</p> <p>4 Glidewell or Glidewell's attorney affixed to the</p> <p>5 document just to indicate this is a document of</p> <p>6 Glidewell that's being produced in the case, and</p> <p>7 you see it's page 1 of 1. If you turn to the</p> <p>8 second page you see it's Glidewell 228. I don't</p> <p>9 think it's one document. I think it was an</p> <p>10 assemblage that was presented to Mr. Shuck in this</p> <p>11 form and I'm present it to you in this form</p> <p>12 because it was produced to him. Not that I think</p> <p>13 they actually go together.</p> <p>14 A. Okay.</p> <p>15 Q. Let me see if we can learn a little bit</p> <p>16 about what appears to have been produced here.</p> <p>17 The first page labeled GL 227 appears to have</p> <p>18 numbers on it for -- well, columns for four years,</p> <p>19 basically 2012 back to 2009. Do you see that?</p> <p>20 A. I do.</p> <p>21 Q. And it looks like there's dollar amounts</p> <p>22 there associated with a reference to things being</p> | <p>1 Q. I've seen that in a lot of these</p> <p>2 documents. And I see a reference to blocks and</p> <p>3 solution which I would interpret as being the</p> <p>4 blanks plus some of thenceary product that goes</p> <p>5 with the blanks suches the coloring and liquid and</p> <p>6 the like?</p> <p>7 A. That must be color ants.</p> <p>8 Q. Equipment associated with BruxZir such</p> <p>9 as --</p> <p>10 A. Okay.</p> <p>11 Q. -- milling machines and sintering ovens?</p> <p>12 A. Correct.</p> <p>13 Q. And that's what the equipment is referred</p> <p>14 to?</p> <p>15 A. That and even includes tools.</p> <p>16 Q. Okay. And the first half of GL 227 says</p> <p>17 two labs which I would interpret as this is a</p> <p>18 reference to sales to dental laboratories. Is</p> <p>19 that accurate?</p> <p>20 A. Correct.</p> <p>21 Q. And I questioned Mr. Bartolo at length</p> <p>22 about the Glidewell direct program and the fact</p> |

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| <p style="text-align: right;">Page 57</p> <p>1 that Glidewell sells blanks and also equipment to 2 dental laboratories, the authorized Glidewell 3 Laboratories. And you're familiar with that; 4 correct? 5 A. The blanks makes them an authorized 6 dental laboratory if they purchase blanks and make 7 crowns out of it. 8 Q. Right. And the bottom half of GL 227 9 says to doctors. So those, I take it, 10 areferenceses to sales of blocks and solution or 11 equipment to dentists as opposed to dental labs. 12 Is that accurate? 13 A. That's correct, but it could be a doctor 14 that owns a lab. 15 Q. Yeah, in fact, that's probably what this 16 is because it does look like they're delegate them 17 blanks. You're not normally going to sell a 18 dentist a blank unless they have their own ability 19 to fabricate; correct? 20 A. True that would have to have a mill. 21 Q. That would explain why the numbers in the 22 top half of the document are a lot bigger than the</p> | <p style="text-align: right;">Page 59</p> <p>1 A. I do. 2 Q. This is associated with the BruxZir 3 brand, and you see it's referenced there on the 4 page. Do you see that? 5 A. I do. 6 Q. This is an area where Mr. Shuck actually 7 has a little more knowledge in this area. This 8 one I don't think is -- I don't think this 9 information was produced again later -- correct me 10 if I'm wrong -- but I think this is probably the 11 only presentation of marketing expense that we 12 have in this form. Are you familiar with this 13 data? 14 A. I know what it's talking about. 15 Q. What is being shown on GL 228? 16 A. This looks to me like the money that's 17 been spent on these various activities that are in 18 the left-hand column. 19 Q. This is cumulative from 2009 to 2012? 20 A. Correct. 21 Q. And who is it within Glidewell who would 22 be, you know, managing the expenses? Would that</p> |
| <p style="text-align: right;">Page 58</p> <p>1 numbers in the bottom because there aren't a lot 2 of dentists buying blanks from Glidewell; correct? 3 A. That's correct. 4 Q. There's a lot buying crowns but not the 5 blanks? 6 A. That's correct. 7 Q. All right. And do you have an 8 understanding of what the numbers are that are in 9 this page? Is it just revenue? 10 A. I am less familiar with this than the 11 later document we provided. The later document, 12 if they're the same, it would be net sales. It 13 would be less discounts. 14 Q. That was actually going to be my next 15 question is I know we have had another document 16 production with more information, and maybe 17 that -- maybe this falls within that in any event. 18 But we'll get to the later document, and that 19 probably answers that question. Okay. If we turn 20 to the next page, this would be GL 228, this one 21 appears to be a reference to marketing expenses. 22 Do you see that?</p> | <p style="text-align: right;">Page 60</p> <p>1 be Mr. Shuck? 2 A. It would be. 3 Q. Okay. If we turn to the next page, 4 there's a plot of BruxZir sales. Do you see that? 5 A. I do. 6 Q. And this document looks like it's 7 associated with a Darryl Withrow at the bottom, 8 vice president operations. Do you see that? 9 A. Correct. 10 Q. And you know Mr. Withrow? 11 A. I do. 12 Q. Okay. Do you have an understanding of 13 what's shown on this page? 14 A. This is sales by month. I don't see the 15 years. They're probably there if I look a little 16 closer. It looks like several years, and these 17 dot dot dots I suppose make it clearer. 18 Q. The product started being sold in 2009, 19 correct, the BruxZir? 20 A. Correct. 21 Q. That probably tells us the first month 22 would be June, 2009?</p> |

| Page 61 | Page 63 |
|---|--|
| <p>1 A. Correct. That's probably June, 2009, and 2 then you could just count the years down there. 3 Q. Right. And if that were the case, then 4 this would be showing sales through about June, 5 2012? 6 A. Can you write on this? Not really? 7 Q. You can but I don't think you need to. 8 A. Well, I guess you just count up those 9 Decembers there. That would be one year. 10 Q. Right, right. I see -- if you want to 11 write and add -- do you just want to write and add 12 years to the document? 13 A. I was just going to draw a line there to 14 December. 15 Q. Go ahead. That's not a bad idea since it 16 didn't do that. 17 A. This one only goes to June, 2012. 18 Q. Okay. And this document looks like just 19 based on the document itself it was produced back 20 in early August. 21 A. That's why it only goes to June. 22 Q. Right.</p> | <p>1 that that's the other companies. It's called 2 subsidiaries. 3 Q. Oh, okay. I'm confused then. So you're 4 saying -- the lower line -- the satellite labs, 5 first of all, that's a reference to Glidewell's 6 authorized labs? 7 A. No, that's Glidewell's subsidiaries. 8 Q. Oh, okay. Oh. Oh. So these are sales of 9 crowns by Glidewell's subsidiaries? 10 A. Correct. 11 Q. I see. And these subsidiaries are 12 selling crowns -- is this limited to the U.S.? 13 A. Definitely. 14 Q. And these subsidiaries would be some of 15 the same ones you were referring to earlier 16 associated with the financial statements? 17 A. They are the same ones. 18 Q. Okay. If we turn to the next document -- 19 the next document is a little hard to read and, in 20 fact, the next two document are a little hard to 21 read. One appears to be a two-page document and a 22 12-page document which is kind of in a spreadsheet</p> |
| Page 62 | Page 64 |
| <p>1 A. The later one we provided you, I think, 2 goes to September. 3 Q. And this is sales by month. This is just 4 revenue; is that right? 5 A. Correct. 6 Q. And the top line -- the copy we are 7 looking at in this deposition are in black and 8 white; so I don't know if the original would have 9 been in color or otherwise to distinguish the 10 lines better. The top line is the one associated 11 with the label Glidewell BruxZir; correct? 12 A. Correct. 13 Q. And the all satellite labs BruxZir is the 14 lower line; correct? 15 A. True. 16 Q. And when it says Glidewell BruxZir, 17 that's referencing dental restorations made out 18 the of the BruxZir material; correct? 19 A. That's correct. 20 Q. Okay. And for all satellite labs 21 BruxZir, that's referring to the blanks -- 22 A. No, that's the same thing. It's just</p> | <p>1 form. 2 A. This might look a little better on a 3 spreadsheet. 4 Q. That's what I was going to say was we are 5 going to look at the spreadsheets that were 6 produced later. Is it fair to say that the 7 spreadsheets that were produced to us later 8 include the same information? 9 A. Yes. 10 Q. And that's probably easier to look at 11 those? I have nice printouts of those that I 12 think we can understand a little easier than 13 these. We probably don't need to go through the 14 harder form of presentation. Does that sound fair 15 to you? 16 A. It does. 17 Q. Okay. Good. I like that idea. How you 18 doing? You want to take a little break? 19 MR. TACHNER: Sure. 20 THE WITNESS: I'm doing good. 21 BY MR. JANKOWSKI: 22 Q. You want to keep going or take take a</p> |

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1 break?

2 A. It's up to you guys.

3 MR. JANKOWSKI: Why don't we take a

4 five-minute break.

5 MR. TACHNER: Okay.

6 (Recess taken from 10:58 a.m. to

7 11:11 a.m.)

8 BY MR. JANKOWSKI:

9 Q. Mr. Allred, I'm going to hand you what

10 has been previously marked as Exhibit 40. This is

11 a document that was provided to Mr. Shuck when he

12 was being questioned as Glidewell's designee. If

13 you could just briefly look at Exhibit 40 for me.

14 A. Okay.

15 Q. I'll say this appears to be another

16 example of an assemblage of documents. I don't

17 think it's one document. I think it's a

18 collection of Glidewell documents each of which

19 was produced by Glidewell in the case but they

20 were all kind of combined together and submitted

21 to Mr. Shuck this way. : Does it go on like this?

22 Is it more than one document?

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1 Q. Exactly. It is. The first one appears

2 to be a three-page document with Glidewell's

3 designation for purposes of producing it, GL 229.

4 Then there's a one-page document, GL 230. Another

5 one-page document, GL 231. Another one-page

6 document, GL 232. Then a two-page document GL

7 233. Two-page document, GL 234.

8 A. There's a 234 on here? Oh, okay. There

9 it is. They don't have any headings on them at

10 all, do they.

11 Q. They don't appear to.

12 A. Are these in response to particular

13 questions?

14 Q. They were produced in the case, and in

15 the case Glidewell was asked to produce documents

16 associated with certain areas. The short answer

17 is question.

18 A. Okay. It might help.

19 Q. Let's just go through the first one, the

20 first single page document identifies a doctor ID

21 column, a description column, and a date column.

22 Do you see that?

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1 A. I do.

2 Q. And do you know whether Glidewell has a

3 way of identifying -- well, the doctor ID column,

4 is doctor ID something that Glidewell. Does

5 Glidewell use the term doctor ID? Does it have a

6 particular meaning that you're aware of?

7 A. It does.

8 Q. What does doctor ID mean?

9 A. Every client of the company has a unique

10 ID number, and the first two digits, I believe,

11 has to do with the company that that doctor is

12 dealing with. So a 10 I believe is Glidewell

13 Laboratories.

14 Q. Okay. Some of the subsidiaries would

15 have different two digit beginnings?

16 A. That is what I believe is correct.

17 Q. What about the six digit number that

18 follows the two digit number?

19 A. That's all part of the unique number

20 assigned to a particular individual.

21 Q. So that would be a particular --

22 A. Account I guess you'd say because an

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1 account could be more than one doctor.

2 Q. Sure. And the account in this context is

3 referring to a dentist office typically?

4 A. Correct.

5 Q. Okay. The date column is probably

6 self-explanatory. It's the date something is

7 happening. In fact, it's got a time as well;

8 correct?

9 A. That's correct.

10 Q. And the middle column has a description

11 in it. Can you tell by looking at this what is

12 being referenced in the description column?

13 A. I don't know what that is short for. I

14 would look at that and see that as part of

15 something bigger. Doctors requesting something.

16 I have no idea what it is because it doesn't have

17 any more information than that. It looks like the

18 same account. All the way down this first row

19 here is this same account. It just looks like a

20 doctor requesting something day after day. I

21 don't know what that means.

22 Q. If you go down to the second page of the

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1 document still on GL 229, I see a prefix 30
2 instead of 10 at the beginning?
3 A. Correct.
4 Q. So that's going to be one of the
5 subsidiaries?
6 A. That's true.
7 Q. Do you know which subsidiary 30 is?
8 A. I don't.
9 Q. But it's one of them?
10 A. It would be one of them.
11 Q. And I see some of the descriptions a
12 things like confirm ship date information. Do you
13 see that?
14 A. I do see that.
15 Q. So this appears like maybe what it is is
16 some sort of log of people within Glidewell who
17 are handling communications with the accounts?
18 A. I'm pretty sure I know where this
19 information comes from.
20 Q. Where does it come from?
21 A. This would be a -- we call it GCM. It's
22 what you might think of as an information storage

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1 retrieval account management system. Maybe you're
2 familiar with the old telemagic. That's a way
3 that you record some transaction with an account,
4 a client, and it does record that kind of
5 information, what it was that was discussed, it
6 was, and the date it was done on.
7 Q. So, for example, a Glidewell employee is
8 talking on the phone with a dentist and they'll
9 enter something into the computer that
10 memorializes the phone call?
11 A. Pretty much can count on that with any
12 customer service person.
13 Q. So these entries are probably by the
14 customer service people?
15 A. That would be almost every case.
16 Q. When I was questioning Mr. Bartolo
17 yesterday, he talked about having customer service
18 people working underneath him at Glidewell direct.
19 Is that probably that this is associated with?
20 A. It might be specifically Glidewell
21 direct.
22 Q. Or might not because actually there's

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1 probably customer service separate from Glidewell
2 direct as well; correct?
3 A. That's true.
4 Q. Okay. If we turn to the next page which
5 is designated GL 230?
6 A. Okay.
7 Q. This is a three-column table with the
8 headings product, product ID, and product for sale
9 date. Do you see that?
10 A. That helps, yes.
11 Q. This one I think is a little easier to
12 understand, and we also see the -- if you look
13 under product ID I see BZCLA 1 in the first one.
14 And to the left I see BruxZir color liquid shade
15 A1. This is further confirmation that the BZ
16 seems to be Glidewell's internal designation for
17 BruxZir. Is that fair?
18 A. Yes.
19 Q. Here when it says CL, it looks like it's
20 a shorthand for color liquid. Would you agree?
21 A. That's a logical deduction. It could be
22 anything. Definitely the products are uniquely

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1 identified by codes. That's how they price them
2 in the accounting system. It's all part of the
3 same system.
4 Q. Right. So that first entry there you can
5 see BZCLA1 corresponds nicely with BruxZir color
6 liquid shade A 1?
7 A. That works out good.
8 Q. The last column appears to be providing
9 information on when that particular product was
10 first sold by Glidewell; is that right?
11 A. I see that, yes.
12 Q. If we go down towards the bottom of the
13 column, I see reference to BruxZir milling blanks,
14 12 millimeter, 15 millimeter, 20 millimeter, and
15 25 millimeter. Do you see that?
16 A. I do.
17 Q. You're aware that BruxZir sells milling
18 blanks with different sizes; correct?
19 A. Yes.
20 Q. Similarly this table appears to be giving
21 for each of these various products the first sale
22 date by Glidewell; is that right?

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| <p style="text-align: right;">Page 73</p> <p>1 A. Definitely the first date that this code 2 was ever used. 3 Q. Okay. And to answer your earlier 4 question, this is an example where Glidewell was 5 asked to provide information on the first date of 6 sale, and so this is a document that was produced 7 in response to the sets of requests that included 8 that request. 9 A. Okay. 10 Q. To understand why that would be 11 presented? 12 A. Relating to this first page? 13 Q. Or even this first page. In other words, 14 each of these documents was produced by Glidewell 15 because in the lawsuit they were asked to provide 16 certain types of information. One of the types of 17 information that was asked was what was your first 18 day selling these various products, for example? 19 A. And what was this in response to, the 20 first? 21 Q. I don't know. I'm speaking generally 22 about why the documents are being produced?</p> | <p style="text-align: right;">Page 75</p> <p>1 be a dental lab; correct? 2 A. I would say this one they are dental 3 labs. 4 Q. Do you have an understanding for why 5 these particular labs have been identified in this 6 document? 7 A. It looks to me like they are purchasers 8 given the rest of this stuff here of the zirconia 9 blanks. 10 Q. But certainly this is not a comprehensive 11 list of all the dental labs that buy the blanks 12 because there's a lot more than this; correct? 13 A. There's a lot more than that. 14 Q. And do you have a sense for why this 15 subset was called on on this particular page? 16 A. I don't because I don't see a date which 17 you were saying before maybe corresponded to the 18 first purchasers of blanks. So I don't know why 19 just those few. 20 Q. All right. Let's turn to the next 21 document, GL 232. This is another four-column 22 table that shows model, number serial number, lot</p> |
| <p style="text-align: right;">Page 74</p> <p>1 A. Okay. 2 Q. If you turn to the next document, GL 231? 3 A. I guess I'm there. 4 Q. On this one I see a four-column table, 5 and I see on the left a company. Do you see that? 6 A. I do. 7 Q. A customer first name do you see that? 8 A. Uh-huh. 9 Q. A customer last name, and a customer ID. 10 Do you see that? 11 A. I do. 12 Q. I think you already testified about this 13 about how the customer ID is referring to a 14 particular account? 15 A. Correct. 16 Q. Is it fair to say this table is just 17 providing more information on these accounts, 18 namely a company name and then an individual name? 19 A. It does look to be laboratories in 20 particular. 21 Q. Right. For these instances here, it is. 22 Correct. So the customer ID, the customer might</p> | <p style="text-align: right;">Page 76</p> <p>1 number, and product category. Do you see that? 2 A. I do. 3 Q. Do you have an understanding for what 4 those headings mean within Glidewell? 5 A. I would just have to guess. It doesn't 6 apply to anything on this page. Nothing having to 7 do with this page. 8 Q. But what about model -- just the phrase 9 model number, does that have a meaning within 10 Glidewell, a particular meaning? 11 A. Not that I am familiar with. 12 Q. Okay. How about serial number? 13 A. I only see that it's used here. 14 Q. How about lot number? 15 A. I see that's used here too. 16 Q. Product category I think is 17 understandable; right? 18 A. Yeah, that's pretty straightforward. 19 Q. Okay. Let's turn to the next document, 20 GL 233. This is a two-page document. You know, I 21 think this may maybe helps answer my earlier 22 question to you where we saw some of these names</p> |

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| <p style="text-align: right;">Page 77</p> <p>1 of these companies and we saw first sale 2 information, and you were saying they might be 3 connected, the names and sales, and it looks like 4 GL 233 might do just that; right? In other words, 5 I see a column, the second column over says 6 product first sale date. Do you see that? 7 A. I do. 8 Q. And you've got the product ID on the left 9 which we've already discussed what that is; 10 correct? 11 A. Correct. 12 Q. And now we've got the information we saw 13 before namely a company, a customer first name and 14 a customer last name. Now those are correlated. 15 So is it fair to say that this is providing 16 information on not just the for sale date but who 17 the customer was who purchased the product on that 18 sale date? Does that look accurate? 19 A. Definitely looks like it's showing 20 exactly what a laboratory bought on a particular 21 date. 22 Q. Right. For the various product IDs;</p> | <p style="text-align: right;">Page 79</p> <p>1 Q. And again, you don't have an 2 understanding of what the lot number is that's 3 referenced in the third column over? 4 A. Well, I understand why they use lot 5 numbers. I don't know exactly when they cut over 6 and maybe put it on this sheet or when they 7 stopped using them on this sheet because they were 8 keeping track of it in some other way. 9 Q. What does lot number mean to you? 10 A. That would be something that's kept track 11 of for purposes of quality control and the 12 regulatory affairs, some kind of quality 13 assessment program having to do with ISO 14 certification that Prismatic is ISO certified. So 15 they would have to keep track of that information. 16 Q. When you say Prismatic, this is the 17 Prismatic BruxZir -- 18 A. Prismatic dental craft, Inc. 19 Q. Prismatic dental craft, Inc. Okay. 20 Actually the lot numbers are only shown for some 21 of these for some reason. Do you have an 22 understanding for why some of these don't have lot</p> |
| <p style="text-align: right;">Page 78</p> <p>1 correct? 2 A. Correct. 3 Q. Okay. And the customer ID at the far 4 light is going to be the same customer ID 5 information we discussed earlier; correct? 6 A. That will be a unique number for each 7 account, correct. 8 Q. If we turn to the next page or next 9 document I should say, GL 234, this is similar to 10 one of the earlier ones that appears to have that 11 model number, the serial number, lot number, 12 product category and the product. So, again, this 13 doesn't really have much helpful information on it 14 that I can tell. Can you make heads or tails of 15 GL 234? 16 A. It just looks like the type of product 17 that we sell and all of the different ways that it 18 can be purchased, and primarily in this page here 19 seems to be the different shades of coloring 20 liquid. I see some milling blanks at the bottom 21 and the different sizes. It looks like there's 22 different sizes of sintering boats.</p> | <p style="text-align: right;">Page 80</p> <p>1 numbers associated with them? 2 A. What I was just ruminating on, I don't 3 know if they began to be used on this particular 4 program that's printing this and they were kept 5 track of in some other way before or if now 6 they're kept in some other way and they're not 7 longer kept on this program. I just know they are 8 kept and they are done and every single thing 9 that's made and has to be kept track would have a 10 lot number. 11 Q. So for example the BruxZir milling blanks 12 that are listed towards the bottom of this page, 13 GL 234, page 1 of 2, those are going to lot 14 numbers even though they're not shown on this 15 exhibit? 16 A. Yes. 17 Q. Okay. Let's move on to a lot exhibit and 18 set that one aside. In fact, let's get to the 19 newer documents. I think are we up to 20 Exhibit 120? 21 THE REPORTER: Correct. 22 MR. JANKOWSKI: I'll have the court</p> |

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| <p style="text-align: right;">Page 81</p> <p>1 reporter mark as the next Exhibit 120 a nine-page</p> <p>2 document which is a printout from an ex-he will</p> <p>3 spreadsheet that was produced in native format by</p> <p>4 Glidewell.</p> <p>5 (Exhibit No. 120 was marked for</p> <p>6 identification.)</p> <p>7 BY MR. JANKOWSKI:</p> <p>8 Q. Mr. Allred, if you just briefly look at</p> <p>9 Exhibit 120, do you recognize this exhibit?</p> <p>10 A. I recognize what's on the document. Or</p> <p>11 recognize the words, what they're talking about.</p> <p>12 Q. Okay. And what is being shown in</p> <p>13 Exhibit 120?</p> <p>14 A. It looks like blocks in various sizes</p> <p>15 made to fit various mills, each of them being</p> <p>16 identified by a unique ID.</p> <p>17 Q. So this correlates the product ID with a</p> <p>18 description of what the product is?</p> <p>19 A. Correct.</p> <p>20 Q. As you go down the document, it's not</p> <p>21 just the milling blocks. It goes into other</p> <p>22 products as well correct such as coloring liquids</p> | <p style="text-align: right;">Page 83</p> <p>1 Q. And I see references to a fixed</p> <p>2 department and a BioTemps department and a gold</p> <p>3 zirconia and comp department. Do you see that?</p> <p>4 A. I do.</p> <p>5 Q. And so they're various departments within</p> <p>6 Glidewell that are responsible for fabricating</p> <p>7 these dental restorations and selling them to</p> <p>8 dentists around the country. Is that accurate?</p> <p>9 A. That's true.</p> <p>10 Q. And that's what's being shown here is</p> <p>11 which dental is responsible for these various</p> <p>12 products; correct?</p> <p>13 A. That is the code that is used for each of</p> <p>14 these departments when they fabricate that</p> <p>15 product. So that's how you would keep track of</p> <p>16 your sales if you were in the high tech</p> <p>17 department, all ceramics and you were make a</p> <p>18 BruxZir bridge unfinished, for instance.</p> <p>19 Q. Every crown or dental restoration that's</p> <p>20 sold by Glidewell is going to have a particular</p> <p>21 product ID as shown in Exhibit to and it's going</p> <p>22 to come out with a particular department with a</p> |
| <p style="text-align: right;">Page 82</p> <p>1 and dental restorations?</p> <p>2 A. Yeah, blank block, blank block. This</p> <p>3 looks mainly blocks and then final moves into</p> <p>4 coloring liquids, correct.</p> <p>5 Q. And then moves into dental restorations?</p> <p>6 A. Then dental restorations.</p> <p>7 Q. And I notice under department ID that the</p> <p>8 blocks are sold by Glidewell direct; correct?</p> <p>9 A. Well, it was on this first page here.</p> <p>10 And the second page.</p> <p>11 Q. Right. And that's --</p> <p>12 A. And the third page. And part of the</p> <p>13 fourth page.</p> <p>14 Q. And coloring liquids are also sold by</p> <p>15 Glidewell direct?</p> <p>16 A. Correct.</p> <p>17 Q. Okay. And then if you get to the fourth</p> <p>18 page when you get to dental restorations, which</p> <p>19 are now being sold to doctors or dentists, the</p> <p>20 department changed. It's not Glidewell direct</p> <p>21 anymore. It's other departments; correct?</p> <p>22 A. Correct.</p> | <p style="text-align: right;">Page 84</p> <p>1 department ID as shown in this exhibit; correct?</p> <p>2 A. That's what this is right here.</p> <p>3 Q. And so, again, your testimony today is</p> <p>4 that this is true and accurate business records of</p> <p>5 Glidewell as produced in this case; correct?</p> <p>6 A. That's true. That's how they keep track</p> <p>7 of their production.</p> <p>8 Q. Okay. Let me show you -- or excuse me.</p> <p>9 Let me have the court reporter mark as Exhibit 121</p> <p>10 a four-page document.</p> <p>11 (Exhibit No. 121 was marked for</p> <p>12 identification.)</p> <p>13 BY MR. JANKOWSKI:</p> <p>14 Q. Exhibit 121, Mr. Allred --</p> <p>15 A. Are we done with this one?</p> <p>16 Q. We are done with that one.</p> <p>17 A. Oh, okay.</p> <p>18 Q. Yes, you can set that one aside.</p> <p>19 Exhibit 121 was also produced by</p> <p>20 Glidewell at the same time as the previous</p> <p>21 document, and it was produced in a native format?</p> <p>22 A. This was the most recent we provided you?</p> |

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| <p style="text-align: right;">Page 85</p> <p>1 Q. Correct.</p> <p>2 A. I'm familiar with this.</p> <p>3 Q. What is shown mere in Exhibit 121?</p> <p>4 A. This is showing the sales by month</p> <p>5 beginning in June, 2009, to, I believe, September,</p> <p>6 2012. And be it's broken apart by -- it was four</p> <p>7 categories. I see dental restorations, blocks,</p> <p>8 coloring liquids.</p> <p>9 Q. And then equipments if you go down far</p> <p>10 enough?</p> <p>11 A. And then equipments.</p> <p>12 Q. Okay. And so, again, this document would</p> <p>13 be accurate business records of Glidewell as</p> <p>14 produced by Glidewell in this case?</p> <p>15 A. This is an accurate record produced</p> <p>16 pursuant to your request for document.</p> <p>17 Q. Right. And the left most column is</p> <p>18 showing the year of invoicing; correct?</p> <p>19 A. That's correct.</p> <p>20 Q. And the second column is showing the</p> <p>21 month where one is January and 12 is December and</p> <p>22 so on?</p> | <p style="text-align: right;">Page 87</p> <p>1 do for sure.</p> <p>2 Q. Okay.</p> <p>3 MR. JANKOWSKI: Okay. Can we go off the</p> <p>4 record.</p> <p>5 (Lunc recess taken from 11:40 a.m. to</p> <p>6 12:58 p.m.)</p> <p>7 BY MR. JANKOWSKI:</p> <p>8 Q. Mr. Allred, one of the things that -- we</p> <p>9 just had our lunch break, and one of the things</p> <p>10 that happened was we expedited to cancel the</p> <p>11 deposition of Mr. Sasaki, the chief financial</p> <p>12 officer of Glidewell based on the testimony you've</p> <p>13 been given of giving this morning. And also I had</p> <p>14 a conversation with your counsel. What I had like</p> <p>15 you to do is investigate from Glidewell additional</p> <p>16 financial information along the lines of the</p> <p>17 spreadsheet with the sales informing by month that</p> <p>18 you were testifying about just before lunch and</p> <p>19 under particular I think what -- basically what we</p> <p>20 want to know is both net and gross sales of the</p> <p>21 products. So, you know, like taking into account</p> <p>22 if you have cost of goods sold information on the</p> |
| <p style="text-align: right;">Page 86</p> <p>1 A. Correct. It looks like same info there,</p> <p>2 month and month name.</p> <p>3 Q. They give us both ways of presenting the</p> <p>4 month and product groups are the one you just</p> <p>5 mentioned broken out. Dental restorations which</p> <p>6 means crowns and the like, blocks which mean the</p> <p>7 milling blanks, the coloring liquids and then</p> <p>8 equipment are separate categories in this</p> <p>9 document; correct?</p> <p>10 A. Correct.</p> <p>11 Q. And then the net sales is shown in the</p> <p>12 far right column; correct?</p> <p>13 A. Correct.</p> <p>14 Q. Do you know whether Glidewell maintains</p> <p>15 information on, you know, cost of goods sold</p> <p>16 associated with these categories?</p> <p>17 A. They would have the ability to get that</p> <p>18 information if they didn't do it on a regular</p> <p>19 basis already, for sure.</p> <p>20 Q. Associated, that they could generate</p> <p>21 gross profits by category as well?</p> <p>22 A. That would be something that they could</p> | <p style="text-align: right;">Page 88</p> <p>1 categories that correlates with the sales. Like</p> <p>2 right now the information is just revenue --</p> <p>3 A. The net sales is only net of discounts so</p> <p>4 that is gross sales less any discounts less the</p> <p>5 cost to make it.</p> <p>6 Q. Let me ask you this: What I'd like you</p> <p>7 to investigate is cost of goods sold associated.</p> <p>8 Providing the information on cost of goods sold</p> <p>9 associated with the same sales that are shown --</p> <p>10 A. I think we can do that in general with</p> <p>11 you that wouldn't be anything that we would ever</p> <p>12 know on a unit by unit basis which is how all</p> <p>13 those figures are derived by the individual</p> <p>14 product code by doctor. There's no way to know</p> <p>15 what the actual cost of goods sold is for that</p> <p>16 unit. It would be very easy for a company like I</p> <p>17 work for to be able to determine what the cost of</p> <p>18 goods sold was for something, for example, a</p> <p>19 finished crown. Any type.</p> <p>20 Q. In a sense that's what I'm asking for?</p> <p>21 A. It's not anything that exists on a</p> <p>22 monthly to monthly basis necessarily.</p> |

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| <p style="text-align: right;">Page 89</p> <p>1 Q. You don't need to give it on a</p> <p>2 month-by-month basis if that's not appropriate.</p> <p>3 A. Okay.</p> <p>4 Q. For example, if you've got a cost of</p> <p>5 goods sold for what the product is generally for</p> <p>6 the 2011 calendar year, I think that suffice.</p> <p>7 A. And you're interested in that for a</p> <p>8 specific product? Because obviously for all</p> <p>9 products that's part of the statements where you</p> <p>10 look down and see the net income.</p> <p>11 Q. Okay. So the products that are</p> <p>12 identified in the exhibit we were looking at</p> <p>13 before lunch.</p> <p>14 A. Well, we had equipment, color ants,</p> <p>15 dental restorations.</p> <p>16 Q. Right.</p> <p>17 A. And one other thing. Blocks.</p> <p>18 Q. Right.</p> <p>19 A. So obviously colorants are divided up</p> <p>20 into many many different types, and it probably</p> <p>21 would make sense to at most have it for colorants</p> <p>22 in general. And then crowns could, of course, be</p> | <p style="text-align: right;">Page 91</p> <p>1 what your request was. If you made it something</p> <p>2 as narrow as what, for instance, is the cost of</p> <p>3 goods sold for a full contour zirconia crown given</p> <p>4 the fact that you buy the block for a certain</p> <p>5 amount, you could come up with that amount. If</p> <p>6 you then say how much does it cost to produce a</p> <p>7 zirconia block of, say, a certain thickness and I</p> <p>8 remember seeing 25, for instance the ones we use,</p> <p>9 that would give you an idea. I think if that's</p> <p>10 all you need, I think that would be pretty easy to</p> <p>11 do.</p> <p>12 Q. I understand what you're saying. Why</p> <p>13 don't you investigate for us the cost of goods</p> <p>14 sold associated with the BruxZir crown.</p> <p>15 A. Okay.</p> <p>16 Q. That product specifically. I mean that's</p> <p>17 the product that's kind of at issue in this case</p> <p>18 in terms of Keating sells crowns under the KDZ</p> <p>19 Bruxer mark and so on.</p> <p>20 A. Okay. And then let me ask you in</p> <p>21 Exhibit 121, do you still have that in front of</p> <p>22 you.</p> |
| <p style="text-align: right;">Page 90</p> <p>1 many different laboratories we know, and it would</p> <p>2 probably make sense to just have something in</p> <p>3 general for the company in general. Otherwise, it</p> <p>4 looks like a lot of tedious work, and I don't know</p> <p>5 how much time that would take or how difficult it</p> <p>6 would be.</p> <p>7 I just know my company could easily know</p> <p>8 what the cost of goods sold was for a particular</p> <p>9 item if you have one in mind like, for instance, a</p> <p>10 mill and even that might be kind of difficult but</p> <p>11 I'm sure they could come up with it, something</p> <p>12 based on an analysis. Some of these things would</p> <p>13 be a little difficult because it would be</p> <p>14 difficult to know how much you put in there if you</p> <p>15 as a company looking from the point of view from a</p> <p>16 long range plan of building mills because</p> <p>17 obviously in the early stages you have research</p> <p>18 and engineering and you have things you try and</p> <p>19 don't work and you replace and theoretically your</p> <p>20 first unit could cost a million dollars even</p> <p>21 though the target price could be 60,000. Some of</p> <p>22 these things would be up to us how we interpreted</p> | <p style="text-align: right;">Page 92</p> <p>1 A. Is that the last one we looked at?</p> <p>2 Q. Yes.</p> <p>3 A. Okay.</p> <p>4 Q. Where it has net sales on the right hand</p> <p>5 column, does Glidewell have unit information as</p> <p>6 well on that?</p> <p>7 A. Oh, yeah, it would. It would have it all</p> <p>8 the way down to what the sales would be by the</p> <p>9 particular laboratory that did it. You saw that</p> <p>10 code there.</p> <p>11 Q. Right, right. So here another thing I</p> <p>12 would like to have is a number of unit associated</p> <p>13 with this spreadsheet essentially, the information</p> <p>14 in this spreadsheet. So each entry has a net</p> <p>15 sales amount, but I don't know how many of the</p> <p>16 dental restorations --</p> <p>17 A. Shall we just agree that we just do that</p> <p>18 for just the BruxZir crowns?</p> <p>19 Q. Sure.</p> <p>20 A. Because that might be a little bit more</p> <p>21 manageable.</p> <p>22 Q. Yes and same for cost of goods sold.</p> |

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1 A. Do you want it actually broken out by --
2 in some particular way more than just a number?
3 Because I can tell you right now we're going over
4 15,000 full contour circumstance crowns every
5 week.
6 Q. Okay. That's helpful. That's the kind
7 of information that -- if you can -- I mean if you
8 can just have somebody generate --
9 A. How about number of units of the crowns
10 per week since 2009 because I think we actually
11 have that. It's something we've actually provided
12 but we can do it on a separate spreadsheet.
13 Q. Or per month since this is per month?
14 A. Yeah. I think we have it already, in
15 fact.
16 Q. Right.
17 A. We could just maybe redo it again in a
18 format like this if you'd like it. So we have
19 2009, we have June. This whole sheet would be
20 nothing but full contour zirconia crowns and in
21 the right hand column the net sales would be
22 number of units.

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1 Q. Correct.
2 A. Okay. I think that's very doable.
3 Q. Can you also do net sales with the crown
4 as well?
5 A. You mean right with it? Sure.
6 MR. JANKOWSKI: Here it says dental
7 restorations. That might be something beyond the
8 crown.
9 THE WITNESS: You can divide it up by \$99
10 it's roughly the same number.
11 BY MR. JANKOWSKI:
12 Q. Has the price been the same the whole
13 time?
14 A. I can't he.
15 Q. Do these dental restorations include
16 restorations beyond crown here?
17 A. No, they're all per unit. Could very
18 well be a bridge but it still would be by unit.
19 Q. Let me ask you this then; make this
20 spreadsheet just for the crowns. And where --
21 actually I guess that's all we -- you're telling
22 me the price has been 99 the whole time?

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1 A. Yeah I'm just giving you a heads up on
2 what it be. I already pretty much know what the
3 number would be just by the sales.
4 Q. An equivalent to this spreadsheet where
5 it's nothing but the full zirconia crowns
6 coverage?
7 MR. TACHNER: Do you break it out
8 separate from bridges?
9 THE WITNESS: No.
10 MR. TACHNER: Then you can't apply with
11 this request.
12 THE WITNESS: Yeah, we have them by unit
13 because a bridge is a certain number of units, and
14 that's how they're built.
15 MR. TACHNER: If you have a three-unit
16 bridge, it's a \$300 item?
17 THE WITNESS: Yes, it is. From us. Of
18 course, from the doctor it's 3,000.
19 MR. TACHNER: I'm just making sure you
20 agree to something you could do. That's all.
21 BY MR. JANKOWSKI:
22 Q. And then, in fact, I guess the -- then

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1 the units is just going to be -- well, if it's
2 easy, just put the units on the spreadsheet as
3 well.
4 A. I'm sure that's how -- this might even
5 come about. It might have been the number of
6 units times -- minus something and times 99
7 dollars. I don't know if they actually have
8 separate columns for all that or not.
9 Q. Right?
10 A. That's what the codes are all about.
11 Once you put in the code you put 1 times that code
12 and you get the dollar amount; so it's built in.
13 That's what the codes are all about but they
14 obviously have some discounts or something. Maybe
15 that's a minus 1 or minus 10 percent for a could
16 you please on so that's why you end up with the
17 net sales being a little different. It roughly
18 would be something -- if anything it would be more
19 units than what it would be by dividing by 99
20 because if it was cheaper than 99 because someone
21 had a 10 percent discount in every ace, it would
22 actually be 10 percent more units than if you

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|---|--|
| <p style="text-align: right;">Page 97</p> <p>1 divided that by 99. We're talking about</p> <p>2 something -- I can tell you the figure would be a</p> <p>3 certain number if divided by 99 or more.</p> <p>4 Q. In fact, I've seen \$20 off coupons?</p> <p>5 A. Okay. Per unit?</p> <p>6 Q. Right, per unit with a maximum of four or</p> <p>7 something.</p> <p>8 A. That could be different because say it</p> <p>9 was an eight-unit bridge.</p> <p>10 Q. Yes. Okay. So that would be perfect.</p> <p>11 So it would look like Exhibit 121. You don't need</p> <p>12 the replicate the month by number and name other</p> <p>13 than it would be the same except for product group</p> <p>14 it's just going to say BruxZir crown?</p> <p>15 A. Dental restoration, sure.</p> <p>16 Q. And units and net sales. Does that sound</p> <p>17 right?</p> <p>18 A. Sure. In fact, I can just write it on</p> <p>19 here.</p> <p>20 Q. Don't write it on that because this goes</p> <p>21 with the court reporter.</p> <p>22 A. Oh, because that one is already written</p> | <p style="text-align: right;">Page 99</p> <p>1 a unit by unit basis.</p> <p>2 Q. Okay.</p> <p>3 A. Because there's costs that aren't paid</p> <p>4 that. For our own purposes obviously not for</p> <p>5 purposes of litigation but only keeping track of</p> <p>6 all cost and can be spread in any number of ways.</p> <p>7 You would obviously be looking at a company like</p> <p>8 this at what products have the highest profit</p> <p>9 margin and that might be irrelevant if a product</p> <p>10 with a low profit margin has a lot more units but</p> <p>11 still it's just information like a company I work</p> <p>12 for would probably keep in some format or another,</p> <p>13 not on a daily basis but certainly on a yearly</p> <p>14 basis and probably episodically for planning</p> <p>15 purposes. So I know it's something we can derive.</p> <p>16 As far as on a monthly basis, all you'd be doing</p> <p>17 is just finding the figure and however we would at</p> <p>18 some point in time through some certain date and</p> <p>19 you divide it by the number of units and just</p> <p>20 spread it. It is a make work thing but it</p> <p>21 wouldn't be a difficult thing obviously. I just</p> <p>22 want you to know that's all someone would be</p> |
| <p style="text-align: right;">Page 98</p> <p>1 on.</p> <p>2 Q. That's okay. But we'll make a point of</p> <p>3 that.</p> <p>4 A. So we only just want the number or name</p> <p>5 of the month.</p> <p>6 Q. If you want to put in both you can but</p> <p>7 it's redundant and you don't have to repeat that.</p> <p>8 And does Glidewell keep track of a</p> <p>9 profit, a profit ability of its products does it</p> <p>10 have a sense what the profitability is of its</p> <p>11 BruxZir crowns?</p> <p>12 A. Sure.</p> <p>13 Q. That was also information we asked for?</p> <p>14 A. Profitability? That would be the profit</p> <p>15 margin; right.</p> <p>16 Q. Yeah. I would like something like that</p> <p>17 to be also include. Can that be tracked by month?</p> <p>18 A. I doubt. Anything can be put on a</p> <p>19 monthly basis.</p> <p>20 Q. I'm not trying to make work for you?</p> <p>21 A. I'm just saying anyone can come with</p> <p>22 numbers. Those things aren't done on a monthly or</p> | <p style="text-align: right;">Page 100</p> <p>1 doing. You'd be interpreting my request with me</p> <p>2 understanding it the way I do and directly it</p> <p>3 somewhat is say they want to divide it out by unit</p> <p>4 based on the month because they want to see it by</p> <p>5 month. At firm they would be determining it based</p> <p>6 on gross numbers because that's what it would be.</p> <p>7 It would be number of costs associated with why</p> <p>8 not use the most possible. If question do 15,000</p> <p>9 a week, for instance, why not to date. We're</p> <p>10 talking at least 20 weeks or something. Why not</p> <p>11 find out everything it took over a 20-week period</p> <p>12 to make that many crowns and from that month on</p> <p>13 you can spread it by month or hour. I'm saying</p> <p>14 mainly over all you're not going to get more than</p> <p>15 a number, it's a real number it's what it cost to</p> <p>16 make a particular type of crown (*** CHECK ***).</p> <p>17 Q. I appreciate in an explanation and with</p> <p>18 that in mind I'm asking for if you can gather for</p> <p>19 me what Glidewell considers the profitability of</p> <p>20 its BruxZir crown.</p> <p>21 A. Okay.</p> <p>22 Q. Product.</p> |

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1 A. And you'd be talking about gross profit
2 margin or net.
3 Q. Both gross and net?
4 A. We kind of me to the net only we know it
5 will probably be more than the financial statement
6 shows because I think the figures will show that
7 it is a higher profit margin than the old
8 fashioned way.
9 Q. Okay. Which would explain why you guys
10 are putting a lot of effort in that area.
11 A. Well, that definitely works out well for
12 the customer too because that's probably resolved
13 in the price. So it could be even though it might
14 be more affordable to me, we might be pricing it
15 so attractively that it isn't. I don't know. I'd
16 have to look at the the numbers. I'm not quite
17 sure.
18 Q. It sounds like that's a number that may
19 exist by year for the product?
20 A. Oh, definitely, yeah. I'd say it would
21 probably exist over a certain number of units,
22 however many number of units. The more you take,

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1 the more accurate they will would be. All books
2 are done at least on a yearly basis so I know we
3 can get a yearly. I think it's possible -- a
4 yearly would be great actually.
5 Q. Let's go with yearly.
6 A. Okay.
7 Q. That sounds like something that's exists?
8 A. That would be a very accurate number.
9 Q. It's something Glidewell already kind of
10 creates in its ordinary course of which is?
11 A. And the costs would kind of naturally
12 flow on a year to year basis because that's when
13 the calendar year is.
14 Q. Okay. I'd appreciate if you can gather
15 that information and then Mr. Tachner can produce
16 that?
17 A. Okay.
18 Q. To us. Thank you.
19 A. So I'll just write on here plus
20 separately.
21 Q. Right. That's separate.
22 A. Net and gross profit margin, and mail

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1 just say BZ. I might as well go with the code
2 there.
3 Q. Mr. Allred, what I'd like to ask you
4 about now is Glidewell's application for its
5 trademark in the mark BruxZir --
6 A. Okay.
7 Q. -- that we've been talking about. And in
8 particular, the mark -- why don't I just put it in
9 front of you here. We'll have the court reporter
10 mark as Exhibit 122 what was submitted, I believe,
11 as Exhibit A to the complaint in this lawsuit
12 which is from the United States Patent and
13 Trademark Office, and it is a trademark
14 registration in the mark BruxZir?
15 (Exhibit No. 122 was marked for
16 identification.)
17 BY MR. JANKOWSKI:
18 Q. Mr. Allred, do you recognize Exhibit 122?
19 A. I do.
20 Q. This is the registered trademark that's
21 kind of the subject of the lawsuit that brings us
22 here today; correct?

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1 A. Well, it's the Class 10 mark; so that is
2 for the dental restoration, the custom-made dental
3 restoration.
4 Q. Do you recognize it as something that was
5 attached to the complaint?
6 A. I recognize it as our trademark document.
7 I don't remember attaching it to the complaint.
8 Q. Do you see at the bottom where it says
9 Exhibit A?
10 A. Yes.
11 Q. And you have a copy of this registration
12 in Glidewell's files; correct?
13 A. Sure. You mean the original? Yeah,
14 sure.
15 Q. Right. So are you the person who was
16 associated with filing this application with the
17 U.S. Patent and Trademark Office?
18 A. I filed it.
19 Q. Okay. You filed it. In that regard what
20 materials did you provide to the PTO in connection
21 with filing for this trademark?
22 A. Well, you can see it all there on the web

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1 because they have the documentation right there,
2 but I remember it was our crown box, and it was
3 even exemplars of full contour zirconia crowns. I
4 think the box had the foam pad in it and had the
5 label of the goods on the under side of the lid so
6 that it showed through. It was a clear plastic
7 lid that crowns were separate laying next to the
8 box is how I think it was.
9 Q. When you say exemplars, were there
10 actually crowns?
11 A. Yes, and they were described in the
12 goods.
13 Q. So these must have been crowns that were
14 made for actual patients. They were crowns made
15 to be an exhibit essentially?
16 A. Yeah, they could have been a patient's
17 crown. Once you got the file, you can make as
18 many as you want. It was probably a real crown
19 for somebody maybe. I don't know. Some model.
20 It wasn't necessarily a model of a patient. Maybe
21 it was a model of a model, but it was definitely a
22 real crown.

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1 Q. And after filing the application did you
2 have any more actions -- interactions or
3 communications with the trademark office?
4 A. I don't think so. I think it just sailed
5 right on through.
6 Q. So you didn't speak with the trademark
7 examiner?
8 A. I definitely didn't speak with the
9 trademark examiner. It there was anything that
10 came up, it would have been in writing, but I
11 don't remember anything ever came up on it.
12 Q. Okay. Did you submit -- now, you said
13 you submitted the actual box that the crowns come
14 in; right?
15 A. Just an image.
16 Q. Or an image of the box. How were the
17 crowns provided?
18 A. They were just laying next to it, and
19 everything was photographed on kind of a felt
20 background.
21 Q. So the physical crowns didn't go to
22 Washington, D.C.?

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1 A. No.
2 Q. It was just an image?
3 A. Yeah, all together the box with the label
4 with the crowns laying next to the box.
5 Q. Okay.
6 A. It's not really a box, I guess. It's a
7 plastic case in the shape of a tooth. It has a
8 foam insert.
9 MR. JANKOWSKI: I'll have the court
10 reporter mark as the next exhibit Exhibit 123 --
11 I'm sorry. A document bearing production Nos. KDA
12 002808 through KDA 002831 and Mr. Allred this is
13 as you were suggesting a printout of materials
14 from this trademark application that you can
15 access on the web as you said. I'll ask you
16 questions to see whether you agree with that.
17 A. Okay.
18 (Exhibit No. 123 was marked for
19 identification.)
20 BY MR. JANKOWSKI:
21 Q. If you can just briefly review
22 Exhibit 123.

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1 A. Am I looking at the same thing again
2 here?
3 Q. Some of it looks like it gets replicated.
4 I'm not sure why that is.
5 A. That's their end, huh?
6 Q. Could be.
7 A. Oh, here's their search criteria. It all
8 looks like something I've seen before.
9 Q. Okay. And if you turn to the page that
10 bears production No. 2814, it's a page with not
11 much on it actually.
12 A. Oh, you mean just the signature?
13 Q. Well, not a signature there but
14 there's --
15 MR. TACHNER: Right here.
16 MR. JANKOWSKI: Right.
17 THE WITNESS: Oh, I got it, yeah.
18 BY MR. JANKOWSKI:
19 Q. So there under the correspondence and
20 address it has your name; correct?
21 A. Correct.
22 Q. Which, again, is consistent with your

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| <p style="text-align: right;">Page 109</p> <p>1 recollection that you're the one who filed this</p> <p>2 particular trademark application; is that correct?</p> <p>3 A. Yes.</p> <p>4 Q. If you turn to the page 1 ahead of that,</p> <p>5 2813, you'll see there's information on the</p> <p>6 current owner that shows that the owner is James</p> <p>7 R. Glidewell, dental ceramics, Inc. do you see</p> <p>8 that?</p> <p>9 A. Correct.</p> <p>10 Q. And that's accurate; correct?</p> <p>11 A. That's true. Db a Glidewell Laboratories.</p> <p>12 Q. There's a section on goods and services</p> <p>13 where it describes the goods and services as</p> <p>14 dental bridges, dental caps, dental crowns, dental</p> <p>15 inlays, dental onlays and dental process three</p> <p>16 sees; correct?</p> <p>17 A. That's true. It's what comes with the</p> <p>18 010.</p> <p>19 Q. Which is the Class 10 you talked about</p> <p>20 earlier?</p> <p>21 A. Correct.</p> <p>22 Q. So this particular application is about</p> | <p style="text-align: right;">Page 111</p> <p>1 A. No, that's the prescience of the USPTO.</p> <p>2 I'm amazed.</p> <p>3 Q. Just to be clear the mark is in the text</p> <p>4 BruxZir as opposed to a stylized presentation.</p> <p>5 A. Strictly the type.</p> <p>6 Q. It doesn't have to be a certain font</p> <p>7 doesn't have to be a certain color?</p> <p>8 A. True.</p> <p>9 Q. Because sometimes you can seek that kind</p> <p>10 of thing with trademark protection; correct?</p> <p>11 A. True.</p> <p>12 Q. But here the protection is going to the</p> <p>13 word?</p> <p>14 A. Or the words</p> <p>15 Q. One thing I wanted to ask you is on -- if</p> <p>16 you turn back to the page KDA 2813, some of the</p> <p>17 information that gets entered in here has to do</p> <p>18 with the first use of the mark by Glidewell;</p> <p>19 correct?</p> <p>20 A. Correct.</p> <p>21 Q. And that's listed here on KDA 2813 about</p> <p>22 halfway down the page. Do you see that under</p> |
| <p style="text-align: right;">Page 110</p> <p>1 applying the BruxZir name to the dental</p> <p>2 restorations, namely, the crowns made of zirconia;</p> <p>3 correct?</p> <p>4 A. Specifically out of zirconia, correct.</p> <p>5 Q. Right, right. And at the bottom of this</p> <p>6 page can be KDA 2813, there's a printout of the</p> <p>7 prosecution history. Do you see that?</p> <p>8 A. I do.</p> <p>9 Q. I think you said a moment ago it sailed</p> <p>10 through prosecution pretty readily, and that's</p> <p>11 reflected here as well; correct?</p> <p>12 A. I think it looks like three months. Four</p> <p>13 months. Three months and a week.</p> <p>14 Q. Three months to a week. That's pretty</p> <p>15 fast to sale through, don't you think?</p> <p>16 A. I thought so.</p> <p>17 Q. If you turn to page 215, there's a very</p> <p>18 big presentation of the mark BruxZir; correct?</p> <p>19 A. That's their doing. They make it that</p> <p>20 big. They must have known something.</p> <p>21 Q. That's not showing Glidewell's pride in</p> <p>22 the mark?</p> | <p style="text-align: right;">Page 112</p> <p>1 goods and services classification?</p> <p>2 A. I see a date to the right -- oh, yeah to</p> <p>3 the right of first use date, correct.</p> <p>4 Q. Right, right. So what's your</p> <p>5 understanding of what is asked for when it says</p> <p>6 first use date?</p> <p>7 A. That would be the earliest time it was</p> <p>8 used in commerce.</p> <p>9 Q. That actually leads to one of my</p> <p>10 follow-up questions which there's also an entry</p> <p>11 for first used in commerce date. Do you see that?</p> <p>12 A. Correct.</p> <p>13 Q. So do you have an understanding for what</p> <p>14 the difference is between a first use date and a</p> <p>15 first use in commerce date?</p> <p>16 A. I don't know unless it means when maybe</p> <p>17 the goods were first used versus when the mark was</p> <p>18 first used. Maybe it would refresh my memory and</p> <p>19 I'm not remembering. It seems if there was a</p> <p>20 difference, I probably knew at one time. Let me</p> <p>21 see here.</p> <p>22 Q. In case the same date is used?</p> |

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| <p style="text-align: right;">Page 113</p> <p>1 A. It's the same, right. I know it has 2 nothing to do with the application date. It's the 3 first use date, first use in commerce date. I 4 don't know. You'd have to refresh my recollection 5 to see if I ever knew it. 6 Q. And what is the, if you recall, what does 7 the date June 6, 2009, represent in being entered 8 here? What was it that was done then that 9 triggered entry in this application? 10 A. That would be the first date that the 11 goods were ever sold to a dentist for use in a 12 patient's mouth. 13 Q. Okay. By sold to a dentist, it would 14 mean invoice, an invoice date? 15 A. Definitely. A prescription date probably 16 was the week ending of whatever week that was 17 billed out. I believe where that date would come 18 from. 19 Q. So you said prescription date. What is a 20 prescription date? 21 A. That would be whatever date it was that a 22 doctor had given a prescription for something or</p> | <p style="text-align: right;">Page 115</p> <p>1 Q. So if they were done for free, were they 2 providing these free crowns to dentists before 3 this June 6, 2009 date? 4 A. I don't think so. I think it was all at 5 the same time. 6 Q. So this would be reflecting a crown 7 that's sent to a dentist? 8 A. That would be billed, but there would be 9 a lot of others that were done at the same time 10 that were free. 11 Q. Oh, I see. Okay. So the June 6, 2009, 12 date is a billed date for a BruxZir crown that was 13 sold to a dentist? 14 A. That would be the date that this is, the 15 first time it was ever billed and sold, but at the 16 same time there were crowns more than were billed 17 that were actually provided for free. 18 Q. In addition to the ones being sold? 19 A. Exactly. 20 Q. The ones that were being sold, were those 21 being sold to dentists who were writing 22 prescriptions out for the BruxZir product?</p> |
| <p style="text-align: right;">Page 114</p> <p>1 was given in lieu of whatever the doctor -- 2 whatever he was organized. I know when he first 3 started doctors are getting both what they 4 prescribe and also the BruxZir full contour 5 zirconia crown. 6 Q. The prescription would be for something 7 other than the BruxZir product? 8 A. I don't know that that's what this is 9 for. This is the bill date. 10 Q. So what would the prescription be for 11 that Glidewell would receive that would trigger 12 providing the BruxZir crown? 13 A. Could have gotten a prescription for a 14 crown that was, for instance, a metal occlusal 15 otherwise a PFM crown. And then they would have 16 included that for free to let the doctor see what 17 the difference would be if he chose one over the 18 other for no additional price. Anything here 19 would have to be void so it would be something 20 someone paid for. But the very first crowns that 21 went out were done in that way also. This was 22 actually for free.</p> | <p style="text-align: right;">Page 116</p> <p>1 A. Exactly. 2 Q. Since this was a new product, how did 3 dentists know to write a prescription for the 4 BruxZir product? 5 A. Well, in addition to whatever advertising 6 there was, one of the best advertising was what I 7 just described. It was a situation where perhaps 8 a full contour zirconia crown might be what the 9 doctor would have rather prescribed if he had 10 known about it. So he got both and got a chance 11 to try both so he could see the fit, the look 12 compared to what he actually ordered and choose 13 one over the other and no difference in price. It 14 was system Mr. I a way to point the doctor to a 15 new option. 16 Q. At this point in June, June 6, 2009, you 17 hadn't yet been providing out the free BruxZir 18 crowns; correct? 19 A. I don't think so. I think it all 20 happened during that week. 21 Q. Right. So the very first dentist who was 22 paying for a crown wasn't doing so because he'd</p> |

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1 earlier got a free crown, correct, because he's
 2 paying for it on June 6.
 3 A. It could have all been in the same week.
 4 Q. Oh, so he got a free crown earlier in the
 5 week and he decided to buy a crown later in the
 6 same week?
 7 A. True.
 8 Q. You mentioned advertising. Do you know
 9 when Glidewell began advertising the BruxZir name?
 10 A. I don't know the exact dates. I know
 11 we've probably gone through all that. You might
 12 have either got that from Jim. I think it was at
 13 the same time. Probably through e-mail blasts.
 14 Q. And do you know if any of those e-mail
 15 blasts were before June 6, 2009?
 16 A. No, I don't know.
 17 Q. I'll have you briefly look back at
 18 Exhibit 122. This was the one-page registration.
 19 You might have put it underneath the previous
 20 exhibit. You might have put it at the bottom.
 21 A. The trademark?
 22 Q. Yes. So one thing I see on here is

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1 there's an reg number, 3739663. Do you see that?
 2 A. Yes.
 3 Q. That's a number associated with this
 4 formal registration by the trademark office;
 5 correct?
 6 A. Correct.
 7 Q. And there's another number if you look
 8 down towards the bottom which is listed as a
 9 serial number, 77-761757. Do you see that?
 10 A. I do.
 11 Q. And that's another number associated with
 12 the application for trademark; correct?
 13 A. Correct.
 14 Q. Okay. And this also shows the date on
 15 which it was filed which was June 17, 2009;
 16 correct?
 17 A. Correct.
 18 Q. Is that consistent with your recollection
 19 as to when you filed the trademark application?
 20 A. It is.
 21 Q. So it was shortly after the first use
 22 date that you put in the application; correct?

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1 A. True.
 2 Q. And the registration itself came out, it
 3 looks like, on January 19, 2010. Correct?
 4 A. I saw that on here. Is it on here too.
 5 Q. It's on Exhibit 22 as well. Underneath
 6 the reg number?
 7 A. Oh, up here. Correct.
 8 Q. And at the very bottom of Exhibit 122
 9 there's a reference to Kevin Corwin as the
 10 examining attorney. Do you see that?
 11 A. Uh-huh.
 12 Q. Does that name ring a bell at all for
 13 you?
 14 A. It doesn't.
 15 Q. Which makes sense because you didn't
 16 really deal with him?
 17 A. I didn't.
 18 Q. Okay. And inside Exhibit 123 if you turn
 19 to page KDA 2810, inside that document, correct.
 20 Turn in about four pages?
 21 A. Oh, okay.
 22 Q. To 2810. This is another copy of the

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1 registration. It's the same as Exhibit 122;
 2 correct?
 3 A. Yes.
 4 Q. It also shows that the class of goods is
 5 Class 10 be on the formal registration; correct?
 6 A. That's correct.
 7 Q. Now, if you turn to page 2820 within the
 8 same document towards the end, here you see and I
 9 think I heard you mention this earlier when you
 10 were looking through the document at the
 11 beginning, what is shown at KDA 2820?
 12 A. It looks like a search criteria that this
 13 examiner was using to see if the mark as taken, I
 14 suppose.
 15 Q. Okay. And you didn't play any role in
 16 the searching that the examiner did; correct?
 17 A. No.
 18 Q. One thing I notice is it doesn't look
 19 like the examiner searched for the term bruxer,
 20 meaning a patient with bruxism; correct?
 21 B-r-u-x-e-r.
 22 A. I don't say that on there. I see brux

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| <p style="text-align: right;">Page 121</p> <p>1 with asterisks before and after so I suppose</p> <p>2 that's the same way of searching for that.</p> <p>3 Q. Do you understand the language there? I</p> <p>4 see where it says brux, and I see bi and ti and</p> <p>5 reference to be not dead. Do you know what that</p> <p>6 means?</p> <p>7 A. I think so. What does that mean?</p> <p>8 A. It looks to me like he's looking for the</p> <p>9 letters b-r-u-x if they occur in the middle or end</p> <p>10 or anywhere in a trademark and is still alive, I</p> <p>11 suppose.</p> <p>12 Q. What's the bi refer to, the bi, ti in</p> <p>13 brackets? Do you see that?</p> <p>14 A. Yeah. Is that in the goods maybe? I'm</p> <p>15 not sure. I don't know. What is it?</p> <p>16 Q. I don't know.</p> <p>17 A. I'm not going to guess then.</p> <p>18 Q. No, I don't want you to guess. I'm just</p> <p>19 wondering if you knew.</p> <p>20 A. I'm not sure.</p> <p>21 Q. And you didn't do anything to educate</p> <p>22 Mr. Core win about the significance of the word</p> | <p style="text-align: right;">Page 123</p> <p>1 behalf of Glidewell before you filed this</p> <p>2 application just to see whether BruxZir was a good</p> <p>3 mark to be using?</p> <p>4 A. I did.</p> <p>5 Q. And what kind of searching did you do?</p> <p>6 Do you recall?</p> <p>7 A. I went to their site, and I looked for</p> <p>8 anything that had the word brux in it, and I also</p> <p>9 Googled anything there was to find on Google.</p> <p>10 Q. When you say in their site, you're</p> <p>11 talking about the trademark office site?</p> <p>12 A. Yes.</p> <p>13 Q. And you did a going search for brux as</p> <p>14 well?</p> <p>15 A. I did.</p> <p>16 Q. Any other search terms that you looked</p> <p>17 for other than brux?</p> <p>18 A. A lot of different search terms at the</p> <p>19 time because the name was not established until</p> <p>20 this was final adopted. So I was doing a lot of</p> <p>21 different searches on a lot of different names.</p> <p>22 Q. Names that were candidates that you were</p> |
| <p style="text-align: right;">Page 122</p> <p>1 bruxer in the dental industry is that accurate?</p> <p>2 A. I don't remember ever talking to him.</p> <p>3 Q. Your normal practice was to fill out</p> <p>4 trademark applications without interacting with</p> <p>5 the trademark examiner more than you had to. Is</p> <p>6 that fair?</p> <p>7 A. That's true. That's a fact. That's how</p> <p>8 this went. It's in their system. It really just</p> <p>9 fell into place.</p> <p>10 Q. And if you turn to the page KDA 2822 so a</p> <p>11 few more pages forward in the document or toward</p> <p>12 the back. I'm sorry.</p> <p>13 A. Towards the back yeah.</p> <p>14 Q. Is this a reproduction of the</p> <p>15 illustration you were discussing earlier when you</p> <p>16 said there were actual examples of crowns you had</p> <p>17 provided?</p> <p>18 A. It is.</p> <p>19 Q. There you can see the BruxZir brand on</p> <p>20 the sicker on the container; correct?</p> <p>21 A. True.</p> <p>22 Q. Did you do any searching yourself on</p> | <p style="text-align: right;">Page 124</p> <p>1 considering?</p> <p>2 A. Exactly.</p> <p>3 Q. Do you recall what candidates existed</p> <p>4 before you -- before Glidewell decided on BruxZir?</p> <p>5 A. I don't. I just remember the general</p> <p>6 idea of things that had the word zir in it.</p> <p>7 Q. And so did you do searching on zir, z-i-r</p> <p>8 as well?</p> <p>9 A. When something looked like it was a</p> <p>10 candidate, like I say, not just thrown out there</p> <p>11 because there was maybe 40 or 50 ideas were going</p> <p>12 back and forth here and there, but not on every</p> <p>13 single one, just something that became a focus.</p> <p>14 Q. My understanding is that Mr. Shuck is the</p> <p>15 one who originated the name BruxZir. Is that</p> <p>16 consistent with your recollection?</p> <p>17 A. It is.</p> <p>18 Q. And he ran the name by various management</p> <p>19 people at Glidewell including Dr. DiTolla;</p> <p>20 correct?</p> <p>21 A. Dr. DiTolla is the person that he talked</p> <p>22 to about it who was at a dental show at the time.</p> |

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| <p style="text-align: right;">Page 125</p> <p>1 Q. And he shared the name with an audience</p> <p>2 of dentists at the time. Is that your</p> <p>3 understanding?</p> <p>4 A. It is, yeah.</p> <p>5 Q. Let me show you another exhibit here.</p> <p>6 I'll have the court reporter mark as Exhibit 124 a</p> <p>7 one-page document --</p> <p>8 A. Are we done with this one?</p> <p>9 Q. Yes, you can put that one with an away</p> <p>10 one-page document bearing the production number</p> <p>11 boat right 000085.</p> <p>12 (Exhibit No. 124 was marked for</p> <p>13 identification.)</p> <p>14 BY MR. JANKOWSKI:</p> <p>15 Q. Mr. Allred, do you recognize the document</p> <p>16 marked as Exhibit 124?</p> <p>17 A. Is this our serial number here? I don't</p> <p>18 know.</p> <p>19 Q. Yes, you'll see halfway down you'll see</p> <p>20 the serial number 77761757. Do you see that?</p> <p>21 A. I see that.</p> <p>22 Q. If you compare it with Exhibit 122 you'll</p> | <p style="text-align: right;">Page 127</p> <p>1 up a copy of your application?</p> <p>2 Q. Right. It gives you. It's a user</p> <p>3 interface so you can go on the trademark website</p> <p>4 and access information?</p> <p>5 A. I have used it then.</p> <p>6 Q. In fact, if you look at this printout is</p> <p>7 that what it looks like to you is a printout from</p> <p>8 the U.S. PTO website that's giving you the ability</p> <p>9 to access documents associated with Glidewell's</p> <p>10 trademark we've been discussing?</p> <p>11 A. It does. It looks like if I checked the</p> <p>12 box here for specimen and it says JPEG I would get</p> <p>13 that image there that we looked at earlier.</p> <p>14 Q. Right. And, in fact, there's entries</p> <p>15 here that correspond to the filing of the</p> <p>16 application and the issuance of a registration</p> <p>17 certificate, a notice of publication, and so on.</p> <p>18 Do you see that in the bottom half?</p> <p>19 A. I do.</p> <p>20 Q. One thing I see is there's two entries</p> <p>21 there, more recent entries in the chronology</p> <p>22 that's known in Exhibit 124 it says NOS notice of</p> |
| <p style="text-align: right;">Page 126</p> <p>1 see it's the same serial number.</p> <p>2 A. Same serial number?</p> <p>3 Q. Correct.</p> <p>4 A. I've never actually seen this page.</p> <p>5 Q. Do you recognize this page as a -- do you</p> <p>6 see halfway down the page you see a reference to</p> <p>7 the trademark status and document retrieval with</p> <p>8 the acronym TSDR? Do you see that?</p> <p>9 A. Somewhere in here it will say retrieval?</p> <p>10 Q. Right. It's about halfway down the page.</p> <p>11 A. Oh, you mean TSDR?</p> <p>12 Q. Yes.</p> <p>13 A. I see that.</p> <p>14 Q. Do you have a familiarity with what a</p> <p>15 TSDR is?</p> <p>16 A. I think it's one of the USPTO subsystems</p> <p>17 for accessing their data, I think.</p> <p>18 Q. And have you used that system yourself?</p> <p>19 A. I probably have if that's the only way to</p> <p>20 get to certain information I might have looked</p> <p>21 for. I don't really remember all is in there. Is</p> <p>22 that what you would look at to, for instance, pull</p> | <p style="text-align: right;">Page 128</p> <p>1 suit incoming. Do you see that?</p> <p>2 A. I do.</p> <p>3 Q. Do you have an understanding of what that</p> <p>4 notice is referring to?</p> <p>5 A. Is that when attorney Holland on behalf</p> <p>6 of the defendant filed something with the Patent</p> <p>7 and Trademark Office to prevent the registration</p> <p>8 of the mark in Class 5? That's what I would guess</p> <p>9 from looking at this. That's all I would know. I</p> <p>10 don't know if that's it.</p> <p>11 Q. Okay. And there's one listed for</p> <p>12 November 9, 2011, and a second one listed for</p> <p>13 March 15, 2012. Do you see that?</p> <p>14 A. I do.</p> <p>15 Q. So those dates have any significance to</p> <p>16 you?</p> <p>17 A. Well, the fact that this one on the top</p> <p>18 here is fairly recent, March; so it would have to</p> <p>19 be something that's happened fairly recently.</p> <p>20 Q. I'm just asking if you have an</p> <p>21 understanding for what happened on that date?</p> <p>22 A. I can confirm if that's something your</p> |

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1 law firm has done on behalf of the client. If
2 it's on behalf of something attorney Holland did,
3 I don't know whether I would remember whether or
4 not what that would be.
5 Q. Okay. You can put that exhibit down. So
6 this trademark BruxZir associated with the
7 registration at Exhibit 122 registered in January,
8 2010; correct?
9 A. Yes.
10 Q. And deposit Glidewell begin doing
11 anything different once it received this
12 registration?
13 A. No.
14 Q. Did it change its marketing materials?
15 A. No.
16 Q. How about the use of a circle R as
17 opposed to a TM? Did it make any changes in that
18 regard?
19 A. When we got the circle R, we started
20 using it.
21 Q. This January, 2010, date, is that
22 associated with when Glidewell would have started

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1 using the circle R?
2 A. Yes.
3 Q. On which products did Glidewell begin
4 using the circle R?
5 A. On the full contour zirconia crowns sold
6 to dentists.
7 Q. Any other products?
8 A. No.
9 Q. How about today? Do you know whether
10 Glidewell applies its circle R product designation
11 to products other than the full contour zirconia
12 crowns?
13 A. I don't believe it does but I sews it
14 could since we have the circle R in Europe. It
15 could also apply to to blocks, but I don't think
16 we do.
17 Q. Now, you said a circle R in blocks. So
18 Glidewell has a registration to apply BruxZir to
19 its blocks sold to Europe?
20 A. We have the circle R for that, yes.
21 Q. But I take it the packaging is different
22 for goods going to Europe than it is for goods

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1 going to customers in the U.S.; correct?
2 A. I'm not sure about that. I don't know.
3 It could be a different kind of box they use
4 there. I'm not sure.
5 Q. So Glidewell might be using the circle R
6 BruxZir circle R on its packaging of milling
7 blanks sent to customers in the United States?
8 A. Not in the United States, no.
9 Q. Okay. So it's not using the circle R on
10 its packaging for milling blocks being sent to
11 customers in the United States?
12 A. No? How about on its advertising
13 materials.
14 A. No. TM.
15 Q. Do you monitor that?
16 A. Yeah. I would say yes.
17 Q. How do you monitor that?
18 A. Well, whenever I become aware of an
19 improper use of the mark, I notice it.
20 Q. And if you notice it, what do you do?
21 A. Well, we only use it the proper way; so
22 whenever I notice it, I make sure it is used the

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1 proper way.
2 Q. Who do you talk to about that?
3 A. The best person to talk about that would
4 be the person who works directly with the people
5 that actually do the design for all of our
6 materials. So that would be Mike Cash.
7 Q. And he works underneath Mr. Shuck;
8 correct?
9 A. Yes.
10 Q. And how about on Glidewell's website? Do
11 you monitor how the circle R is used on the
12 website?
13 A. Yes. I don't go there specifically to
14 see if anyone has changed something in the
15 meantime but I'm there quite often.
16 Q. If you see a circle R that shouldn't be
17 there, you'll let somebody know about it?
18 A. Definitely.
19 Q. For the website would that also be
20 something where you say something to Mike Cash?
21 A. Yes, same thing. That's also the same
22 group that would keep the website up to date.

| | |
|--|---|
| <p style="text-align: right;">Page 133</p> <p>1 Q. And e-mail blasts be the same answer?</p> <p>2 You go to Mike Cash?</p> <p>3 A. If there was a change in an e-mail, if</p> <p>4 somehow it had been used inappropriately and I had</p> <p>5 seen that, definitely I would raise the issue with</p> <p>6 Mike Cash.</p> <p>7 Q. And what about if it's involving</p> <p>8 materials sold by Glidewell direct? Is Mike Cash</p> <p>9 still the person to talk to?</p> <p>10 A. Yeah, because that would be a label.</p> <p>11 Q. So Mike Cash handles Glidewell direct</p> <p>12 marketing as well?</p> <p>13 A. Well, that's for sure, but he would</p> <p>14 handle all design and printing.</p> <p>15 Q. Now, Glidewell's -- let me set a</p> <p>16 foundation here.</p> <p>17 Glidewell has a relationship with a</p> <p>18 number of authorized labs who purchase the BruxZir</p> <p>19 milling blanks; correct?</p> <p>20 A. That's true. .</p> <p>21 Q. So those dental labs have the right to</p> <p>22 use the BruxZir name associated with the product</p> | <p style="text-align: right;">Page 135</p> <p>1 Bartolo who has a relationship with them and</p> <p>2 probably deals with them on a regular basis</p> <p>3 anyway.</p> <p>4 Q. Oh, since you raised Mr. Bartolo's name,</p> <p>5 I just want to confirm something. In talking</p> <p>6 about these authorized labs, I asked Mr. Bartolo</p> <p>7 whether there were written agreements between</p> <p>8 Glidewell and the authorized labs that contained</p> <p>9 written provisions associated, things like the</p> <p>10 right to use the trademark. Mr. Bartolo said he</p> <p>11 did not believe there were any such written</p> <p>12 agreements. Is that your understanding as well?</p> <p>13 A. That's correct. There isn't.</p> <p>14 Q. I was going to say I think you would know</p> <p>15 better than Mr. Bartolo for sure since it's a</p> <p>16 legal document and you being the general counsel.</p> <p>17 Do you have an understanding for how</p> <p>18 quickly after the registration was issued by the</p> <p>19 PTO in January, 2010, that Glidewell started</p> <p>20 adopting the circle R?</p> <p>21 A. I could only guess that it was almost</p> <p>22 immediately.</p> |
| <p style="text-align: right;">Page 134</p> <p>1 they make with the BruxZir milling blanks;</p> <p>2 correct?</p> <p>3 A. Our authorized labs are providing the</p> <p>4 Class 10 goods to dentists. So they probably will</p> <p>5 always be using the circle R.</p> <p>6 Q. Right. You anticipated my next question</p> <p>7 which is do you monitor what the use of the</p> <p>8 BruxZir name is by Glidewell's 180 or so</p> <p>9 authorized labs?</p> <p>10 A. I have to say yes because I know we've</p> <p>11 had to contact labs now and again. But it's not</p> <p>12 anything that we have a program of actually</p> <p>13 following on any periodic basis. Just if we do</p> <p>14 become aware of any improper use, we definitely</p> <p>15 would do something about it.</p> <p>16 Q. And the something about it is you'll</p> <p>17 notify them about the property usage to follow?</p> <p>18 A. Definitely.</p> <p>19 Q. And who will notify the authorized lab or</p> <p>20 who will contact them? Is that you personally or</p> <p>21 somebody else?</p> <p>22 A. No that would be someone like Robin</p> | <p style="text-align: right;">Page 136</p> <p>1 Q. You don't recall?</p> <p>2 A. I think I do kind of recall telling</p> <p>3 everybody we got the circle R, and I'm sure it</p> <p>4 would have been incorporated in anything beyond</p> <p>5 that. I don't recall ever having any reason to</p> <p>6 think we ought to wait or anything that's very</p> <p>7 responsive company. (***) CHECK (***) I'm sure it</p> <p>8 was pretty much about the same time.</p> <p>9 Q. And the instructions to start using a</p> <p>10 circle R would that have gone to Mike Cash as well</p> <p>11 or would that go to Jim Shuck or someone else?</p> <p>12 A. Definitely both of them would have been</p> <p>13 something that would have been probably worthwhile</p> <p>14 sharing with everyone in the company. But it</p> <p>15 wouldn't have necessarily been me sharing it.</p> <p>16 Probably would have been me telling Jim Shuck</p> <p>17 about it.</p> <p>18 Q. And in addition to the marketing done by</p> <p>19 Mr. Shuck and Mr. Cash, Glidewell also has</p> <p>20 information being conveyed by Dr. DiTolla as well;</p> <p>21 correct?</p> <p>22 A. Information conveyed about?</p> |

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|---|--|
| <p style="text-align: right;">Page 137</p> <p>1 Q. About the BruxZir crowns.</p> <p>2 A. He is definitely a purveyor of</p> <p>3 information about anything to do with dentistry,</p> <p>4 and he promotes that material.</p> <p>5 Q. So he lectures to dentists, for example;</p> <p>6 correct?</p> <p>7 A. He does.</p> <p>8 Q. And do you monitor the use of the BruxZir</p> <p>9 trademark in the materials that are used and</p> <p>10 developed by Dr. DiTolla?</p> <p>11 A. Any materials he uses probably are</p> <p>12 prepared by Glidewell Laboratories under his</p> <p>13 instruction.</p> <p>14 Q. I guess what I'm wondering about is do</p> <p>15 you or does somebody else monitor the marketing</p> <p>16 materials or I won't even call them marketing</p> <p>17 materials. Whatever materials Dr. DiTolla is</p> <p>18 using when he's lecturing to dentists to see how</p> <p>19 the BruxZir mark is being used?</p> <p>20 A. I don't know about the word monitor, but</p> <p>21 I'm very aware of everything that goes out to the</p> <p>22 public.</p> | <p style="text-align: right;">Page 139</p> <p>1 are under Mike Cash.</p> <p>2 Q. I'll have the court reporter mark as</p> <p>3 Exhibit 125 a seven page document produced by</p> <p>4 Glidewell in this case with the production No. GL</p> <p>5 223.</p> <p>6 (Exhibit No. 125 was marked for</p> <p>7 identification.)</p> <p>8 BY MR. JANKOWSKI:</p> <p>9 Q. Mr. Allred, can you just briefly review</p> <p>10 Exhibit 125 for me, please?</p> <p>11 A. Okay. I know what this would be. Sure.</p> <p>12 Q. What is Exhibit 125?</p> <p>13 A. It is a filing here in the United States</p> <p>14 for the mark under international Class 5.</p> <p>15 Q. So this is the other patent</p> <p>16 application -- I'm sorry, not patent, the other</p> <p>17 trademark application that we talked about earlier</p> <p>18 for the name BruxZir. This one being for the</p> <p>19 milling blanks; correct?</p> <p>20 A. Correct.</p> <p>21 Q. And your name appears on this document as</p> <p>22 the correspondence person who filed the</p> |
| <p style="text-align: right;">Page 138</p> <p>1 Q. And how are you aware of it?</p> <p>2 A. I see it myself just like the public</p> <p>3 does. It's right on our website.</p> <p>4 Q. Does Dr. DiTolla pass it by you or by</p> <p>5 Mr. Shuck or somebody for authorization before he</p> <p>6 uses the materials?</p> <p>7 A. Not for authorization, no.</p> <p>8 Q. Does he pass it by you for comments or</p> <p>9 feedback?</p> <p>10 A. Very possibly he could run ideas by</p> <p>11 anybody. That's possible.</p> <p>12 Q. But that's not like a required procedure</p> <p>13 before he presents to dentists?</p> <p>14 A. Well, he is the director of education; so</p> <p>15 that is really his responsibility.</p> <p>16 Q. Right. And I questioned him about that.</p> <p>17 He said the same thing about that. In fact, he</p> <p>18 testified that he really makes the videos that</p> <p>19 he's in. He's responsible for the content;</p> <p>20 correct?</p> <p>21 A. That's true. But the resources he's</p> <p>22 using is Glidewell Laboratories and those people</p> | <p style="text-align: right;">Page 140</p> <p>1 application; correct?</p> <p>2 A. That's correct.</p> <p>3 Q. Like the other application, this one is</p> <p>4 seeking protection just in the name BruxZir;</p> <p>5 correct?</p> <p>6 A. Yes.</p> <p>7 Q. This one has a later serial number</p> <p>8 because it's filed later in time. I'll just read</p> <p>9 it off of the front page of Exhibit 125. It</p> <p>10 appears to be 85332886. Do you see that?</p> <p>11 A. I see that.</p> <p>12 Q. Okay. And do you know what date this</p> <p>13 was -- this application was filed on?</p> <p>14 A. If I look on here I would.</p> <p>15 Q. Sure, you can look on there.</p> <p>16 A. May 27, 2011.</p> <p>17 Q. Okay. Is that consistent with your</p> <p>18 recollection of when you filed the application?</p> <p>19 A. It doesn't seem like that along ago, does</p> <p>20 it? It seems like a lot longer ago. I guess that</p> <p>21 is consistent with the facts.</p> <p>22 Q. So it was roughly two years after the</p> |

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1 earlier application; correct?

2 A. Let's see. I guess the other one was

3 June, 2009, and this is May, 2011. So that's

4 roughly two years.

5 Q. Okay. Is there a particular -- well,

6 first of all, in terms of first use, do you know

7 what date was provided -- that you provided for

8 this application associated with the first use of

9 the mark or first use in commerce of the mark?

10 A. I'd have to look as far as what the exact

11 date would be.

12 Q. If you look on page 2 of the document, I

13 think it's listed there.

14 A. Page 2. I'm on that page. Page 2 of 7?

15 Q. Correct.

16 A. First use anywhere and first use in

17 commerce are the same, 1102009.

18 Q. The blanks are first being sold by

19 Glidewell with the BruxZir mischaracterize in

20 November of 2009 is that accurate?

21 A. Correct. That makes more sense. I

22 thought things were much further back very good.

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1 Q. Blanks were already being sold in 2009.

2 They just didn't have the application filed

3 promptly for that?

4 A. For the circle R, that's true.

5 Q. Staying on page 2 of this exhibit, the

6 identification of the goods here is for dental

7 ceramics this time; correct?

8 A. That's correct. That's what the 005

9 class is.

10 Q. Right. And do you have an understanding

11 as to whether this application has issued as a

12 registered mark?

13 A. I do understand. I know that had hasn't.

14 Q. If you turn to page 7 of Exhibit 125, I

15 see an illustration of a box. Do you see that?

16 A. Last page well.

17 Q. Correct.

18 A. Yeah, I see it.

19 Q. Is this what's been produced here as

20 Exhibit 125, is this a complete representation of

21 the patent application -- excuse me, the trademark

22 application you filed with the Patent and

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1 Trademark Office?

2 A. It is.

3 Q. Okay. We had the discussion earlier

4 about materials provided. You didn't provide any

5 additional materials beyond what's shown in this

6 exhibit?

7 A. No additional materials.

8 Q. You haven't had any telephone calls with

9 the examiner in this case either; is that correct?

10 A. I don't remember this being anything

11 other than something that sailed right on through

12 too unless he might through some writing asked if

13 it was the same company or not. I'd have to look

14 to see if there was anything like that. Still

15 James.

16 A. Right. Glidewell dental ceramics, Inc.,

17 so I don't know why he would have called but if

18 there was it would strictly be that, if interpret

19 the owner of the previous mark. I don't remember

20 getting such a call.

21 Q. And the image that's on the last page of

22 Exhibit 125, that's an example showing the

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1 packaging for the zirconia milling blanks using

2 the BruxZir mark; correct?

3 A. That's correct.

4 Q. It has a little TM next to it because, of

5 course, you don't have a registration in BruxZir

6 for use with the milling blanks; correct?

7 A. That's correct. It's still that way.

8 Q. So your understanding is to this day when

9 used in connection with zirconia milling blanks,

10 Glidewell's going to use the TM and not the circle

11 R; is that correct?

12 A. Correct. My only caveat was in Europe I

13 suppose we could still use the circle R but I

14 don't know if we do.

15 Q. But in the U.S. you would not use the

16 circle R?

17 A. We would not.

18 Q. In this document, Exhibit 125 that was

19 produced by Glidewell, this is kind of a business

20 record of Glidewell's that you have a copy of this

21 application in Glidewell's files; is that correct?

22 A. It is correct.

| | |
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| <p style="text-align: right;">Page 145</p> <p>1 Q. Okay. This is a true and correct copy of</p> <p>2 of that document from your files?</p> <p>3 A. It is.</p> <p>4 Q. Okay. I'll have the court reporter mark</p> <p>5 as Exhibit 126 a two-page document bearing</p> <p>6 production Nos. Boat right 83 and boat right 84.</p> <p>7 (Exhibit No. 126 was marked for</p> <p>8 identification.)</p> <p>9 THE WITNESS: Is boat right one of your</p> <p>10 employees that run that off? Where did that come</p> <p>11 from?</p> <p>12 BY MR. JANKOWSKI:</p> <p>13 Q. Boat right is actually the name of an</p> <p>14 expert that was retained by Keating dental arts</p> <p>15 for in case just to provide opinions on the</p> <p>16 practice of examining trademarks in the U.S.</p> <p>17 Patent and Trademark Office. So she provided an</p> <p>18 expert opinion in the case and also produced a</p> <p>19 number of documents, some of which are these that</p> <p>20 you're looking at here.</p> <p>21 A. You mean before he ever filed for his</p> <p>22 trademark?</p> | <p style="text-align: right;">Page 147</p> <p>1 MR. JANKOWSKI: No, it's a different</p> <p>2 serial number.</p> <p>3 MR. TACHNER: This appears to be</p> <p>4 something called em Bauer.</p> <p>5 MR. JANKOWSKI: Right.</p> <p>6 MR. TACHNER: I don't think this has</p> <p>7 anything to do with this litigation.</p> <p>8 MR. JANKOWSKI: Whether or not it has to</p> <p>9 do with the litigation, I'm not going to ask</p> <p>10 Mr. Allred about it.</p> <p>11 MR. TACHNER: Good. Because I don't</p> <p>12 think he could answer it.</p> <p>13 MR. JANKOWSKI: You're right. I don't</p> <p>14 think he'll be able to answer it either.</p> <p>15 Let me show you another exhibit.</p> <p>16 MR. TACHNER: But you did mark it?</p> <p>17 MR. JANKOWSKI: It was marked. We'll</p> <p>18 move on to another one. I'll have the court</p> <p>19 reporter mark as Exhibit 127 a printout from the</p> <p>20 website trademarks Justia.com. It's a six-page</p> <p>21 printout, and it's associated with the trademark</p> <p>22 BruxZir.</p> |
| <p style="text-align: right;">Page 146</p> <p>1 Q. No no no. This has all happened in the</p> <p>2 last couple weeks.</p> <p>3 A. Okay.</p> <p>4 Q. If I have you just look at Exhibit 126</p> <p>5 would you agree with me this is another printout</p> <p>6 like the earlier exhibit we looked at which is a</p> <p>7 printout off the USPTO website associated with the</p> <p>8 TSDR system?</p> <p>9 A. I see that.</p> <p>10 Q. This one is for the Class 5 application</p> <p>11 of BruxZir. Do you see that? Do you see the</p> <p>12 serial number about halfway down the first page?</p> <p>13 A. Oh, I see that, yeah.</p> <p>14 Q. Serial number is 85287029. Do you see</p> <p>15 that?</p> <p>16 A. I do.</p> <p>17 MR. TACHNER: Are you stating, David,</p> <p>18 that it is the same serial number as the one we</p> <p>19 just looked at?</p> <p>20 MR. JANKOWSKI: It's not the same serial</p> <p>21 number, is it?</p> <p>22 MR. TACHNER: It doesn't appear to be.</p> | <p style="text-align: right;">Page 148</p> <p>1 (Exhibit No. 127 was marked for</p> <p>2 identification.)</p> <p>3 BY MR. JANKOWSKI:</p> <p>4 Q. Mr. Allred, I just wanted to show you</p> <p>5 this. Are you familiar with this particular</p> <p>6 website which just provides information online</p> <p>7 about trademarks. It's not the USPTO website but</p> <p>8 it's another website that provides information on</p> <p>9 trademarks.</p> <p>10 A. It seems like I've seen the Justia name.</p> <p>11 I don't know that I associated that just with</p> <p>12 trademarks. I know there are sites for that.</p> <p>13 Trademarkia I've seen. I don't think I've used</p> <p>14 the site. ** GET SPELLING **</p> <p>15 Q. On the front page of Exhibit 127 there's</p> <p>16 a status listed for this particular trademark</p> <p>17 application. Do you see that?</p> <p>18 A. What's this thing right here?</p> <p>19 Opposition? This is Whittaker brown? Is this</p> <p>20 from your law office here? Employee named</p> <p>21 Whittaker brown?</p> <p>22 Q. Where are you reading?</p> |

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|---|--|
| <p style="text-align: right;">Page 149</p> <p>1 A. Right here on the second page. 2 Opposition date. Attorney it says Keith Allred 3 and employee named Whittaker brown. I don't know 4 who Whittaker brown is. 5 Q. I don't know who Whittaker brown is 6 either. But if you look on the first page do you 7 see the status listed opposition pending? 8 A. Yeah. 9 Q. And this is for the serial number which 10 is listed down below there 85332886. Do you see 11 that? 12 A. I see that. 13 Q. This one is Glidewell's trademark 14 application it's referring to; correct? 15 A. For what what is 5 I see Class 5 here. 16 Q. Right. This is for Glidewell's Class 5 17 application; correct? 18 A. It looks like it is without pulling 19 anything else out of the bottom of this stack it 20 definitely looks like it would be it. 21 Q. Is this consistent with your 22 understanding that there is an opposition pending</p> | <p style="text-align: right;">Page 151</p> <p>1 application -- excuse me, your understanding of 2 the status of this? 3 A. It is if this is from attorney Holland 4 and this is his opposition to having a 5 registration for the mark and Class 5. 6 Q. You keep mentioning attorney Holland. 7 What's your understanding as to what Mr. Holland 8 did? 9 A. My understanding is he was hired by 10 Keating dental arts to oppose -- well, as part of 11 his representation. I guess it was his 12 recommendation or the client or both -- I don't 13 know. Obviously I don't know what their 14 misunderstanding is -- to oppose the registration 15 of our trademark in Class 5 as part of their 16 defense in this matter against our charge of 17 trademark infringement. That's my understanding. 18 Of course, the trademark infringement is in 19 Class 10, and this is in Class 5. 20 Q. Right. I'll have the court reporter mark 21 as Exhibit 128 a two-page document from the United 22 States Patent and Trademark Office, trademark</p> |
| <p style="text-align: right;">Page 150</p> <p>1 to Glidewell's BruxZir mark for Class 5? 2 A. If this is something that happened fairly 3 recently here? This is 11/1/2011 what is we 4 talked about? This is done by attorney Holland? 5 Q. If you look down, for example, to -- 6 there's no page numbers on it here but there's a 7 listing three pages from the back ending of the 8 document that lists trademark events at the top. 9 Do you see that? 10 A. Yeah. 11 Q. This is goes through a chronology 12 starting with the filing of the application in 13 May, 2011. Do you see that? 14 A. At the very top. 15 Q. Right. 16 A. Correct. 17 Q. And then it goes down to the bottom, and 18 you see in December, 2011, it says opposition 19 instituted. Do you see that? 20 A. Yeah, two down below when it was approved 21 for publication in th dof official gazette. 22 Q. Right. So is that consistent with your</p> | <p style="text-align: right;">Page 152</p> <p>1 trial and appeal board, mailed February 3, 2012. 2 (Exhibit No. 128 was marked for 3 identification.) 4 BY MR. JANKOWSKI: 5 Q. Mr. Allred, do you recognize Exhibit 128? 6 A. I know what it's about. 7 Q. What is this about? 8 A. It looks to me like someone writing on 9 behalf of the trademark office thinks we should 10 have just laid down and let them oppose the 11 registration of the mark in Class 5 and it looks 12 like we didn't see it his way and it looks like 13 he's telling me I'm really full of it. 14 Q. Do you know whether this particular 15 opposition is associated with Glidewell's Class 5 16 mark, application for a Class 5 mark? 17 A. I think I should look at it more closely. 18 I just assumed it was. If it was associated with 19 what we were just talked about earlier, the 20 decision of the defendant to oppose our mark in 21 Class 5, I understand it. If it's something 22 different than that I'll have to look at it more</p> |

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1 closely.

2 Q. Let me ask you a question which is you're

3 aware that Glidewell is opposing Keating's

4 trademark application for its mark KDZ Bruxer,

5 B-r-u-x-e-r; correct?

6 A. Of course. We tried to stop everything

7 before he even infringed it in public. That was

8 the first thing we did. We could have stopped

9 there.

10 Q. So there's at least two opposition

11 proceedings existing between the -- in front of

12 the TPAB now; correct?

13 A. Oh, okay. All right. Is that when this

14 is then?

15 Q. I'm just asking you whether you know

16 whether this has to do -- which of those two

17 oppositions that has to do?

18 A. I really don't know. I guess I can look

19 at this real closely and try to figure it out.

20 Q. But you do understand there's oppositions

21 going both ways, Glidewell has an opposition to

22 Keating's pending application and Keating has an

Page 154

1 opposition in place to Glidewell's pending

2 application for the Class 5 use of the mark;

3 correct?

4 A. Well, yes, but our opposition was to the

5 application by KDA for a confusingly similar mark

6 in Class 10. I don't know if this has anything to

7 do with it or not. I don't know which class this

8 is talking about. I can look at it close. I

9 don't know exactly what it is, but I do understand

10 that we did oppose before the patent and trademark

11 office as soon as we were legally allowed to do

12 the issuance of a trademark in Class 10 of a

13 confusingly similar mark. I do know that after

14 that through his earlier attorney representation

15 they opposed our application for a trademark in a

16 completely different class all together.

17 Q. So Glidewell's opposition is associated

18 with Keating's mark in Class 10?

19 A. Correct.

20 Q. And Keating's opposition is directed at

21 Glidewell's pending application in Class 5;

22 correct?

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1 A. Correct.

2 Q. Okay.

3 MR. TACHNER: David, want to take a

4 break? It's about an hour-and-a-half.

5 MR. JANKOWSKI: Sure, we can take a

6 break.

7 MR. TACHNER: Whenever it's convenient.

8 MR. JANKOWSKI: No, this is fine. This

9 is a fine time.

10 (Recess taken from 2:25 p.m. to

11 2:51 p.m.)

12 BY MR. JANKOWSKI:

13 Q. Mr. Allred, I'm going to hand you a

14 document the court reporter has marked as

15 Exhibit 129. This is a four-page document from

16 the United States Patent and Trademark Office

17 patent trial and appeal board associated with

18 opposition No. 91201389.

19 (Exhibit No. 129 was marked for

20 identification.)

21 BY MR. JANKOWSKI:

22 Q. I'll just ask you do you recognize

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1 Exhibit 129?

2 A. November 18, 2011, is when they mailed

3 it. Is this mailed to somebody? Is that how this

4 works?

5 Q. Well, my understanding is yes, that the

6 November 1, 2011, date is the date that the Patent

7 and Trademark Office mailed it.

8 A. Because you don't see any addresses on

9 here or anything. It's hard to tell if this was

10 something sent to me. It wouldn't as it is.

11 There would have to be a cover letter or

12 something. I could look at it if see what it's

13 about if you'd like.

14 Q. If you can look at it and see if you

15 recognize it.

16 A. You mean what it's about? It wouldn't

17 necessarily be something I'd ever actually seen

18 even though I might know what it's about?

19 Q. Well, no, I think you may have seen it.

20 That's why I'm asking you if you recognize it.

21 A. How would I have received it I guess is

22 the thing. Would it be mailed to me? Would it be

| | |
|--|---|
| <p style="text-align: right;">Page 157</p> <p>1 like this with a cover sheet or something? My 2 address is not on here is what I'm not quite 3 understanding how -- in what form I would have 4 seen it. 5 Q. It's associated with, as you can see at 6 the top there an opposition proceeding between 7 James R. Glidewell dental ceramics and Keating 8 dental arts? 9 A. Exactly. I might understand everything 10 this is about. I don't know how I would have 11 received it I don't know if this come with a cover 12 letter and I would have opened. And this would 13 have been attached and I would have looked at 14 this. I'm just asking if you knew. 15 Q. I don't know. 16 A. Okay. "I know that moreover judicial 17 economy lies in the suspension of the board 18 proceeding because the board as limited 19 jurisdiction." I am guessing this has to do with 20 our opposition to the application for the mark 21 here, KDZ Bruxer. If that's the case that's 22 something I remember we would have opposed that at</p> | <p style="text-align: right;">Page 159</p> <p>1 trademark, anything that contained the word brux. 2 Q. When was that search conducted do you 3 recall? 4 A. It would have been whenever it was we 5 sent a letter to KDA, Inc.'s attorney that we had 6 object to this mark. I don't know exactly when 7 the date of that letter was. It is at the same 8 time. Probably no more than days after I would 9 assume. 10 Q. And is running searches for marks that 11 use brux, is that something you do periodically? 12 A. I don't really know why I was doing it I 13 might have been looking for our own mark I can't 14 tell you why I was searching it. 15 Q. When you say your own mark, you mean the 16 application for use on the milling blanks? 17 A. Possibly then. It would have been 18 looking for our mark and checking to see what 19 existed in Class 5. It could have been about that 20 time. I don't know. I'd have to look at the 21 dates. 22 Q. Have you filed any other oppositions to</p> |
| <p style="text-align: right;">Page 158</p> <p>1 the earliest opportunity and that's when it was 2 published in the gazette. 3 Q. Do you monitor the gazette to look for 4 marks you think may be a problem? 5 A. I do not. 6 Q. How is it you happened to notice Keating 7 dental arts mark as it appeared in the gazette? 8 A. I didn't notice it in the gazette. 9 Q. How did you -- 10 A. Not initially. 11 Q. Okay. 12 A. You're right. It was me, and I guess it 13 was rather serendipitously I noticed this was 14 something that had been filed for. At the 15 earliest opportunity we had we communicated with 16 the defendant through counsel that we would oppose 17 this mark because it was confusingly similar. He 18 didn't do anything about it. All we could do is 19 wait for it to be published in the gazette. 20 Q. How did you learn about the pending 21 application? 22 A. Doing a trademark search on our own</p> | <p style="text-align: right;">Page 160</p> <p>1 trademark applications that Glidewell deems to be 2 confusingly similar the the BruxZir mark? 3 A. No. 4 Q. Let me hand you a document the court 5 reporter has marketed as Exhibit 130. It's a 6 letter of protest memorandum dated December 2, 7 2010. I'll show this to you. 8 (Exhibit No. 130 was marked for 9 identification.) 10 THE WITNESS: Are we done with this? 11 Q. Yes, you can set that aside. 12 A. This is from Katherine /HOL man to 13 Charles joiner. 14 Q. I think it's from Mr. Joiner to Ms. /HOL 15 man. Added least it looks that way. 16 A. There you go. To /HOL man from joiner. 17 Q. This document makes reference to a 18 protester who has filed a letter of protest. Do 19 you see that? 20 A. I see the heading here, letter of 21 protest. Is that what you mean? 22 Q. Right.</p> |

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1 A. Should I be looking through this or
2 something?
3 Q. No, just look at -- in fact, now that I'm
4 looking at this, let me see your copy of that. I
5 really only want the front page of that. I don't
6 know why this is all attached. Sorry. A little
7 inelegant. That's the exhibit.
8 Oh, you know what? I take that back.
9 A. You do want that?
10 Q. Yeah, I want that. So just put that and
11 I'll give you that up with back. Now I recognize
12 why it looks that way. Just keep them together
13 and I will restaple them.
14 The rest of it looks different, but
15 actually it's printouts that are referenced in the
16 protest is what it is.
17 So Mr. Allred this is a letter of protest
18 associated with somebody saying that the mark brux
19 xxx is merely descriptive of the application's
20 goods do you see that (*** CHECK DOCUMENT ***)?
21 A. I do see that written right here.
22 Q. You're understanding is Glidewell is not

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1 the protester that's referenced here; correct?
2 A. Yeah, I know for sure it has nothing to
3 do with Glidewell Laboratories.
4 Q. If you do looking at the pages inside,
5 you'll see what they are are printouts of
6 dictionary definitions, for example, of the word
7 brux, B-r-u-x, and bruxism. Do you see that?
8 A. I see free dictionary. I see the word
9 brux on there. Right there in between brute us
10 and something else.
11 Q. Right.
12 A. I see a brux and then night guard,
13 bruxism, bruxism, brux.
14 Q. Are you familiar with the mark brux xx in
15 Exhibit 130?
16 A. No. I'm just curious as to what it even
17 was. Is it a mouth vanguard some kind?
18 Q. Well, let's take a look. You can put
19 that at the bottom of your stack and I'll get a
20 stapler for that.
21 A. I've like AAA plumbing, huh?
22 Q. I'm going to hand you a series of

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1 exhibits. These are numbered Exhibits 131 through
2 Exhibit 138. Let me just state, for the record,
3 Exhibit 131 is a registration from the trademark
4 office on the principal register for brux guard,
5 b-r-u-x-g-a-r-d. Exhibit 132 is a registration on
6 principal b-r-u-x-e-z-e. Exhibit 133 is a
7 registration on the principal register for the
8 mark brux care, b-r-u-x-c-a-r-e. Exhibit 134 is a
9 registration on the principal register for
10 Brux-eze, b-r-u-x-e-z-e. Exhibit 135 is a
11 registration for the mark Dr. Brux, Dr. spelled
12 D-r period. Exhibit 136 is a registration for the
13 mark brux checker, spelled B-r-u-x-c-h-e-c-k-e-r.
14 Exhibit 137 is a printout from the PTO website
15 associated with an application to register the
16 mark brux cure, spelled B-r-u-x-c-u-r-e. And
17 Exhibit 138 is a printout from the trademark
18 electronic search system associated with an
19 application for the mark Brux XXX spelled B-r-u-x
20 X-X-X. I'll give you these exhibits and let you
21 look at them.
22 A. Okay.

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1 (Exhibit Nos. 131 through 138 were
2 marked for identification.)
3 BY MR. JANKOWSKI:
4 Q. So the question it's for you, Mr. Allred,
5 is in the searching that you're saying that you've
6 done, I guess that would be in connection with any
7 of your trademark applications BruxZir, have you
8 encurrent the marks that are shown here in
9 Exhibits 131 through Exhibit 138?
10 A. I probably did it it was something back
11 further than, what, June 2009. Some of these look
12 like they were after June, 2009. So obviously I
13 wouldn't have seen it then.
14 Q. But you were also doing searches later it
15 sounds like, for example, when you discovered
16 Keating dental arts pending application; is that
17 correct?
18 A. That's true. I didn't see anything in
19 Class 5 in there but I could look through it
20 again.
21 Q. And right. These particular examples of
22 registrations are from Class 10; correct?

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| <p style="text-align: right;">Page 165</p> <p>1 A. Yeah, I noticed that.</p> <p>2 Q. Right. So one thing that's true is there</p> <p>3 are a lot of marks associated with Class 10 that</p> <p>4 do use the term brux in them. Would you agree?</p> <p>5 A. I would agree, yes.</p> <p>6 Q. Do you think the names shown in</p> <p>7 Exhibits 131 to 138 are there any problems with</p> <p>8 them being confusingly similar with the BruxZir?</p> <p>9 A. Certainly not confused with a ceramic</p> <p>10 crown, no.</p> <p>11 Q. Why do you say they're not?</p> <p>12 A. A ceramic crown is something a dentist</p> <p>13 prepares a tooth for and you get something that</p> <p>14 fits exactly and cements in place and a patient</p> <p>15 may have it for the next 40 years. It's all</p> <p>16 together different than anything on this page.</p> <p>17 Q. How about the names themselves?</p> <p>18 A. Well, the fact this it does start with</p> <p>19 b-r-u-x? Theoretical I suppose I can hire an</p> <p>20 attorney's firm and send out letters to all these</p> <p>21 people but we don't do that.</p> <p>22 Q. When you say we don't do that what do you</p> | <p style="text-align: right;">Page 167</p> <p>1 their teeth. They could have expensive dental</p> <p>2 work they don't want to destroy or afraid of the</p> <p>3 damage they might do to their own teeth. That's</p> <p>4 what a bite splint is for. It's generally made</p> <p>5 out of plastic. This may very well be something</p> <p>6 that's custom fit. I don't really know if it's</p> <p>7 prefabricated and supposed to fit everybody and</p> <p>8 anybody. I don't know. I have never really</p> <p>9 looked into it that close. I don't know if this</p> <p>10 would tell me if I did. I'm not familiar with</p> <p>11 their product.</p> <p>12 Q. Now, in the description it says right on</p> <p>13 Exhibit 138 for treatment of bruxism. Do you see</p> <p>14 that?</p> <p>15 A. Are you talking about? Under goods and</p> <p>16 services?</p> <p>17 Q. Yes.</p> <p>18 A. I see that.</p> <p>19 Q. That's not a surprise to you, correct</p> <p>20 because you know from working in the dental</p> <p>21 industry that mouth guards is one of the products</p> <p>22 that will be used to try to treat people who have</p> |
| <p style="text-align: right;">Page 166</p> <p>1 mean?</p> <p>2 A. As a company we're not really very</p> <p>3 litigious.</p> <p>4 Q. But you sent a letter to Mr. Keating?</p> <p>5 A. Of course.</p> <p>6 Q. Why do you see, of course?</p> <p>7 A. Because he was marketing purposefully I</p> <p>8 think a confusingly similar mark right on the coat</p> <p>9 tails of our product.</p> <p>10 Q. I think we were asking or the issue came</p> <p>11 up earlier about what brux xxx was associated</p> <p>12 with. If you look on Exhibit 138, this answers</p> <p>13 the question as to what material -- excuse me,</p> <p>14 what the goods and services are associated, that</p> <p>15 application. Do you want to take a look and you</p> <p>16 can educate yourself on that.</p> <p>17 A. I see that.</p> <p>18 Q. What goods and services is the mark brux</p> <p>19 xxx associated with?</p> <p>20 A. It looks like to me exactly what our</p> <p>21 comfort bite splints are. That is a mouth guard.</p> <p>22 It's for helping people who grind their teeth save</p> | <p style="text-align: right;">Page 168</p> <p>1 bruxism; correct?</p> <p>2 A. I think it's kind of confusing to use</p> <p>3 that language. I understand it if someone does.</p> <p>4 I think of a mouth guard that's something that's</p> <p>5 removable someone uses in sports to protect their</p> <p>6 teeth in case they collide with another player,</p> <p>7 hit in the head with a hockey stick. I think of</p> <p>8 this more as a bite splint. It could be -- I</p> <p>9 guess that really is one of the marks we have too.</p> <p>10 I've never registered it. Maybe when you go on</p> <p>11 the USPTO site it doesn't give more options than</p> <p>12 this. I'm not that familiar with it. I do think</p> <p>13 that is confusing because I think a lot of people</p> <p>14 think of a mouth guard as something you can even</p> <p>15 buy prefabricated and just for kids playing</p> <p>16 football. The bite splint we make and I know we</p> <p>17 make thousands every week they're custom fit for</p> <p>18 the particular patient and they're made of plastic</p> <p>19 and made according to a doctor's prescription and</p> <p>20 they're made for a specific purpose and, of</p> <p>21 course, the doctor is the one prescribing it but</p> <p>22 it's for a patient that apparently suffers from</p> |

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| <p style="text-align: right;">Page 169</p> <p>1 grinding and clenching.</p> <p>2 Q. It's a product for bruxers; correct?</p> <p>3 A. Absolutely.</p> <p>4 Q. And Exhibit 138 seems to be trying to</p> <p>5 register a name for a similar product for bruxers;</p> <p>6 correct?</p> <p>7 A. It look like most of these were that web.</p> <p>8 Q. Actually you're anticipating my</p> <p>9 questions. What's shown here in Exhibits 131</p> <p>10 through 138 are examples of products all designed</p> <p>11 for bruxers wouldn't you agree?</p> <p>12 A. Yes, absolutely.</p> <p>13 Q. Exhibit 137, for example, is also brux</p> <p>14 cure and it also says under goods and services</p> <p>15 mouth guards for medical purposes. Do you see</p> <p>16 that?</p> <p>17 A. I do.</p> <p>18 Q. There again I see the fact that it says</p> <p>19 mouth guards, and I think ideally it would say a</p> <p>20 bite splint or perhaps a mouth protection device</p> <p>21 or something like that just to avoid confusion. I</p> <p>22 know what they're talking about.</p> | <p style="text-align: right;">Page 171</p> <p>1 mouth guards for medical purposes. Do you see</p> <p>2 that?</p> <p>3 A. I do.</p> <p>4 Q. Also to treat bruxers would you agree?</p> <p>5 A. I'm guessing like you say from the name</p> <p>6 brux guard I don't really know. It could be a</p> <p>7 mouth guard. I assume they just have to do it</p> <p>8 that way. It must be the only option they have</p> <p>9 under the way the registration system works here.</p> <p>10 I'm just guessing at that.</p> <p>11 Q. So you don't recall seeing these</p> <p>12 registrations before? You think you may have,</p> <p>13 you're not sure?</p> <p>14 A. I'm pretty sure I would have if any of</p> <p>15 these were prior to June of 2009. Yeah, 2009,</p> <p>16 June. If they were around the time that I would</p> <p>17 have looked again when we were filing a trademark</p> <p>18 for the blank, I might have seen them. I don't</p> <p>19 know if I did or not, but I wouldn't have been</p> <p>20 alarmed about it because of the fact of our prior</p> <p>21 registration being in a different class all</p> <p>22 together and being so related to what it was our</p> |
| <p style="text-align: right;">Page 170</p> <p>1 Q. And the name in and of itself is telling</p> <p>2 you something about the purpose for which the</p> <p>3 product is being used?</p> <p>4 A. That's really all I have to go by. For</p> <p>5 instance, this would be very similar for how our</p> <p>6 goods would be described for the play safe mouth</p> <p>7 guard, but it has nothing to do with bruxism.</p> <p>8 Q. And you don't have brux in the name of</p> <p>9 that product; right?</p> <p>10 A. Not at all.</p> <p>11 Q. But do you have brux in the name of the</p> <p>12 BruxZir product, the full contour zirconia crown</p> <p>13 as it's registered; correct?</p> <p>14 A. That is correct.</p> <p>15 Q. And that is a product that was developed</p> <p>16 for bruxers; correct?</p> <p>17 A. It really was not developed for bruxers.</p> <p>18 Q. Well, Glidewell's marketing materials say</p> <p>19 it's ideal for bruxers; correct?</p> <p>20 A. I think that's good marketing.</p> <p>21 Q. Exhibit 131 on here the first one brux</p> <p>22 guard, spell B-r-u-x-g-a-r-d is also for dental</p> | <p style="text-align: right;">Page 172</p> <p>1 business was. I should check this be out, though.</p> <p>2 It's on my birthday of this year.</p> <p>3 Q. Now, earlier you said that Glidewell's</p> <p>4 not a litigious company; correct?</p> <p>5 A. That's correct.</p> <p>6 Q. It sound like an exception was made for</p> <p>7 what's gun here with Keating dental arts; is that</p> <p>8 correct?</p> <p>9 A. Not exactly. Any company that did what</p> <p>10 Keating dental arts had done we would have</p> <p>11 followed the same course.</p> <p>12 Q. Okay. And have you followed the same</p> <p>13 course with other companies?</p> <p>14 A. There's no other company that's done</p> <p>15 that. But we would if any other company had.</p> <p>16 Q. So the only trademark infringement</p> <p>17 lawsuit that Glidewell's filed has been against</p> <p>18 Keating dental arts; is that correct?</p> <p>19 A. That's correct.</p> <p>20 Q. And you made the comment that Keating</p> <p>21 dental arts purposefully was infringing</p> <p>22 Glidewell's mark; correct?</p> |

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| <p>1 A. That's correct.</p> <p>2 Q. Why do you say purposefully?</p> <p>3 A. Well, I know that he would have been</p> <p>4 aware of our use of the mark and that he would</p> <p>5 have copied it in what he did just as others have</p> <p>6 copied it.</p> <p>7 Q. Why do you say he copied it?</p> <p>8 A. It's pretty obvious. It's very</p> <p>9 confusingly similar to exactly what our mark is.</p> <p>10 Q. First of all, what's your understanding</p> <p>11 of what Keating dental arts mark is that's at</p> <p>12 issue in this lawsuit?</p> <p>13 A. The fact he's using a word that's</p> <p>14 confusingly similar to our mark and marketing the</p> <p>15 goods in the same class to the same people.</p> <p>16 Q. What goods is he marketing?</p> <p>17 A. Full contour zirconia crowns.</p> <p>18 Q. And what's he calling them?</p> <p>19 A. He calls them KDZ Bruxer.</p> <p>20 Q. So why is KDZ Bruxer confusingly similar</p> <p>21 to Glidewell's mark?</p> <p>22 A. Because it looks and sound very similar.</p> | <p>1 with the TM next to it. Do you see that?</p> <p>2 A. I see that.</p> <p>3 Q. I also see midway through the page</p> <p>4 they're introducing the all new KDZ Bruxer written</p> <p>5 out in two words, KDZ space B-r-u-x-e-r. Do you</p> <p>6 see that?</p> <p>7 A. I see that.</p> <p>8 Q. And it's characterized as full contour</p> <p>9 zirconia solution available exclusively from</p> <p>10 Keating dental arts. Do you see that?</p> <p>11 A. I do see that.</p> <p>12 Q. What is it about this presentation, for</p> <p>13 example, Exhibit 139 that is, you believe,</p> <p>14 confusingly similar to Glidewell's mark BruxZir</p> <p>15 shown in Exhibit 122 spelled B-r-u-x-Z-i-r?</p> <p>16 A. Obviously because four times on the page</p> <p>17 he went out of his way to emphasis B.</p> <p>18 Q. Why do you say he's emphasizing b-r-u-x?</p> <p>19 A. It says all new KDZ Bruxer, the all new</p> <p>20 KDZ Bruxer. Before that it's exclusively from</p> <p>21 Keating dental arts, not KDZ arts. And you come</p> <p>22 down here and it says the KDZ Bruxer and down</p> |
| Page 174 | Page 176 |
| <p>1 Q. And why do you say it looks similar?</p> <p>2 A. Easily confused and I think we have</p> <p>3 examples of that.</p> <p>4 Q. Why is it obvious to you?</p> <p>5 A. When I look at it, it looks very similar.</p> <p>6 Q. All right. Let's have the court reporter</p> <p>7 mark as Exhibit 139.</p> <p>8 (Exhibit No. 139 was marked for</p> <p>9 identification.)</p> <p>10 BY MR. JANKOWSKI:</p> <p>11 Q. Exhibit 139 is a copy of Exhibit B to the</p> <p>12 complaint in this action. Mr. Allred, do you</p> <p>13 recognize Exhibit 139?</p> <p>14 A. I recognize it.</p> <p>15 Q. And because it's attached to the</p> <p>16 complaint as Exhibit B, I assume this is an</p> <p>17 example of the use of Keating dental arts' mark</p> <p>18 that Glidewell is concerned about being</p> <p>19 confusingly similar; is that correct?</p> <p>20 A. That's correct.</p> <p>21 Q. And in this document, I see the KDZ</p> <p>22 Bruxer the stylized logo at the bottom of the page</p> | <p>1 there stylized logo, KDZ Bruxer. There's not a</p> <p>2 thing on that page that has anything to do with</p> <p>3 bruxism other than in his mark. So I think it's</p> <p>4 obviously purposefully aimed at riding on the coat</p> <p>5 tail of our mark. We saw it before. We just</p> <p>6 never had anyone no blatantly and just continue to</p> <p>7 do it. That's why we had to filed a case in U.S.</p> <p>8 District Court.</p> <p>9 Q. Let me make another exhibit here. Let me</p> <p>10 mark as 140 a one-page document which is a letter</p> <p>11 from Leonard Tachner to Thomas Gourde, dated</p> <p>12 May 31, 2011. I believe it's attached as</p> <p>13 Exhibit C to the complaint.</p> <p>14 (Exhibit No. 140 was marked for</p> <p>15 identification.)</p> <p>16 THE WITNESS: Am I done with this?</p> <p>17 MR. JANKOWSKI: You can set it down if</p> <p>18 you'd like but we're not done with that. I just</p> <p>19 want to set the time frame here that we're talking</p> <p>20 about.</p> <p>21 THE WITNESS: Okay.</p> <p>22 ///</p> |

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1 BY MR. JANKOWSKI:
2 Q. You mentioned earlier that Glidewell sent
3 a letter to Keating dental arts associated with
4 this. Is this the letter you're referring to
5 marked as Exhibit 140?
6 A. I think it is because this looks well
7 before even our opposition to the mark before the
8 Patent and Trademark Office.
9 Q. And in letter Glidewell is providing its
10 position to Keating dental arts about the
11 confusingly similar appearance that you're
12 testifying about today; correct?
13 A. That's correct.
14 Q. And so the time frame we're talking about
15 is May, 2011; correct?
16 A. Yes.
17 Q. And it's about that time that you
18 discovered that Keating dental arts was using KDZ
19 Bruxer spelled B-r-u-x-e-r, as a mark; correct?
20 A. No, I think this is probably within days
21 of discovering that he had filed for a trademark.
22 Q. When did you first cover or is there an

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1 earlier letter you're thinking about?
2 A. If this is the first letter, then this is
3 probably days after I first learned that he had
4 filed for a confusingly similar mark before the
5 Patent and Trademark Office and was subsequently
6 educated that we couldn't do anything about it
7 until it was published in the gazette. So I know
8 we wouldn't have done anything more than something
9 like this prior to our formal opposition when it
10 was published in the gazette.
11 Q. Let me provide you with another document.
12 This was previously marked as Exhibit 29.
13 A. Okay.
14 Q. This is a letter dated August 9, 2011,
15 from Robin Bartolo to Sean, spelled S-h-a-u-n.
16 So Exhibit 29 was also a letter sent?
17 Q. Glidewell to Keating dental. Is that
18 correct?
19 A. That's correct.
20 Q. It's also associated with the BruxZir
21 mark that Glidewell has; correct?
22 A. That's written right in here. BruxZir

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1 coloring liquid and BruxZir instruction manual.
2 Q. Right. So both Exhibit 29 and
3 Exhibit 140 are letters that Glidewell sent to
4 Keating dental arts basically expressing its
5 position that Keating's mark is confusingly
6 similar to the registered mark. Is that fair?
7 A. That's fair.
8 Q. Now, at that time in 2011 all zirconia
9 crowns were being used predominantly for bruxers;
10 correct?
11 A. That wouldn't be true.
12 Q. Why do you say that wouldn't be true?
13 A. It's just a fact.
14 Q. What do you base that understanding on?
15 A. Based on the fact that doctors prescribed
16 crowns they thought were what they wanted to use
17 for a patient. A patient wasn't necessarily a
18 buckerer.
19 Q. But you were well aware that the BruxZir
20 product when it was released in 2009 was
21 considered a crown that was not very aesthetically
22 pleasing correct?

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1 A. Not correct anything you can get at that
2 time because what you'd compare it to, a solid
3 gold crown and our crowns would be considerably
4 more aesthetically pleasing more than a gold crown
5 at least to most people that ended up going with
6 this option. Doctors would have educated patients
7 on their options and we know from our business
8 experience that a lot of patients don't want gold
9 crowns this their mouth. (***) CHECK (***) So they
10 would prefer this over a gold crown.
11 Q. But the patients that you're talking
12 about who are having to decide between, for
13 example, gold and full contour zirconia are
14 patients who can't have the more aesthetic crowns
15 such as crowns with porcelain on top; correct?
16 A. That's not correct. That's probably more
17 crowns today are prescribed for patients that
18 probably have bruxism that are PFMs than anything
19 else. Certainly not that many gold crowns which
20 would be the optimal solution for a patient that
21 had bruxism.
22 Q. Okay. That's a good example. So PFMs

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1 are crowns that are more aesthetically pleasing
2 than a full contour zirconia crown; correct?
3 A. It's kind of hard to say because PFM
4 means porcelain fused to metal, and there's such a
5 thing as porcelain fused to zirconia, and I don't
6 know that porcelain fused to metal is more
7 attractive than porcelain fused to zirconia. I
8 guess I should argue it's not.
9 Q. First of all, I want to go back to this
10 time frame, back to 2009 to -- mid 2009 to mid
11 2011 time frame. Okay?
12 A. Okay.
13 Q. At that time frame the full contour
14 zirconia crown considered something that wasn't
15 that aesthetically pleasing. I was promote air
16 region promote for use in the posterior part of
17 the mouth because it was not as aesthetic as other
18 crowns that are available; correct?
19 A. We definitely been promote it as an
20 anterior crown and bridge system at the time and
21 still do have better option for that since that
22 register doesn't have the same type of forces

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1 irrespective of whether a person is a bruxer or
2 not and even bruxers don't necessarily destroy an
3 anterior crown. I'm not an expert on that. I'm
4 not a dentist. Generally veneers -- I haven't
5 heard them contraindicated for bruxers, and
6 they're generally made of the weakest material
7 there is, and that strictly is the glass.
8 Q. Again, at this time, 2009 to mid 2011
9 time frame, full zirconia crowns would have been
10 promoted by Glidewell and others as an alternative
11 to gold for their bruxer patients. Isn't that
12 true?
13 A. As an alternative to gold, gold is a
14 premium restoration and dental technicians think
15 that it's the best whether or not they themselves
16 are bruxers. The thing about gold is that it's
17 only the thickness of the metal. It has a lot
18 more applicability than something that's going to
19 have a metal and then a ceramic over it. Even
20 purchasers don't like it, but there's not a whole
21 lot you can do about it unless you sent the work
22 back to the doctor who prepared the teeth, and you

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1 wouldn't do that because he's already given you
2 what he wants you to build a crown on. As an
3 option you could use a full contour zirconia crown
4 because there you have only the thickness of the
5 ceramic and there's no metal underlying it and at
6 the same time it arguably will last as long as
7 gold. So you could call it a gold substitute in a
8 lot of situations where ordinarily you can only
9 use gold.
10 Q. In fact, I've heard testimony --
11 A. I say gold. I should say metal, in other
12 words, you could have a metal crown that was made
13 out of chrome cobalt. It's just that you know
14 what that would look like. It would look like
15 your car bumper.
16 Q. Mr. Friebauer testified yesterday the
17 development of the BruxZir crown was an attempt to
18 give Dr. DiTolla a more tooth looking gold crown
19 which is what he had always wanted. Are you
20 familiar with that?
21 A. That's probably a way of saying. I think
22 in my own mind if I heard that and I would think

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1 of maybe the idea behind what those words would be
2 is more in the way of -- I wouldn't say it was a
3 joke. I don't know -- maybe I'll think of the
4 right word for it but it would be more if you
5 would ask a doctor how would you like a white
6 colored gold crown and, of course, that would be a
7 joke because oh, yeah, sure, do you got it? Of
8 course, you don't because there no such thing as a
9 white colored gold crown. That would be similar
10 to whatever language I don't know what you just
11 said. That just kind of remind me of something
12 that could be said to a doctor if you were giving
13 him an option of a gold crown for this patient or
14 how many doctors here would like a tooth colored
15 gold crown? And then I'm sure doctors would maybe
16 go to raise their hand but wouldn't bother
17 because, yeah, sure, that doesn't exist. But then
18 the idea is, oh, well, maybe it does. Here's an
19 all ceramic that could be a replacement for your
20 next prescription for a gold crown.
21 Q. And the truth of the matter is Glidewell
22 is absolutely trying to make the all zirconia

| | |
|---|--|
| <p style="text-align: right;">Page 185</p> <p>1 crowns look as much like a tooth as they can?</p> <p>2 A. Of course.</p> <p>3 Q. And as you said zirconia, one aspect of</p> <p>4 it, is in terms of function it is a lot more like</p> <p>5 gold than any of the earlier solutions that were</p> <p>6 more aesthetic is that fair?</p> <p>7 A. I don't really -- it may be you're</p> <p>8 thinking and I would agree with. What you're</p> <p>9 saying I couldn't agree with I don't know what you</p> <p>10 men much more like gold. It's obviously not</p> <p>11 metal.</p> <p>12 Q. More like gold meaning you can use it in</p> <p>13 applications such as for bruxers where you use</p> <p>14 would gold? You can substitute the full contour</p> <p>15 zirconia.</p> <p>16 A. I wouldn't actually agree to that. You</p> <p>17 can use a gold crown for anybody. I have a gold</p> <p>18 crown, and I'm not a bruxer.</p> <p>19 Q. I'm not saying I'm limiting it to</p> <p>20 bruxers. I'm saying any application you can use</p> <p>21 gold for, you can use the full contour zirconia</p> <p>22 crown as well and be more aesthetic than the gold.</p> | <p style="text-align: right;">Page 187</p> <p>1 something that's going to last and its properties</p> <p>2 than even dentists. So that's where a dental lab</p> <p>3 would think a gold crown is the optimum</p> <p>4 restoration just like the mummy, the pharaoh.. I</p> <p>5 mean that's not the way a dentist necessarily</p> <p>6 thinks. Maybe they think whatever the patients</p> <p>7 like. I assume there's a two way communication</p> <p>8 and they're giving the patient the options and</p> <p>9 there some kind of informed consent and they're</p> <p>10 giving the patient what they want. Apparently</p> <p>11 most patients don't like gold and it's been that</p> <p>12 way for a long time. When it come to porcelain</p> <p>13 fused to metal crown, gold is arguably I would</p> <p>14 agree a superior coping material, but that's</p> <p>15 probably the fewest of all the PFMs is going to be</p> <p>16 with the precious metal coping. Most of them will</p> <p>17 be with a nonprecious metal coping or maybe a</p> <p>18 semiprecious metal coping. Nonprecious would be</p> <p>19 the strongest and it could be the thinnest; so</p> <p>20 that would be an option that probably doctors</p> <p>21 would consider and suggest to a patient.</p> <p>22 Porcelain fused to nonprecious metal, and that's</p> |
| <p style="text-align: right;">Page 186</p> <p>1 A. That's true. You can say the same thing</p> <p>2 for PFM.</p> <p>3 Q. I don't think you can, though; right?</p> <p>4 There are bruxer patients that will destroy the</p> <p>5 PFMs that won't destroy the gold; correct?</p> <p>6 A. That's not correct. A bruxer patient</p> <p>7 will destroy anything, even destroy their car</p> <p>8 bumper crown. They'll chew through anything.</p> <p>9 They destroy their own dentation. They lose all</p> <p>10 their teeth. They destroy their jaws. They need</p> <p>11 TMJ. They need to have their faces rebuilt.</p> <p>12 Q. But the gold and zirconia solutions are</p> <p>13 an optimal solution and better solution for</p> <p>14 grinders; correct?</p> <p>15 A. Maybe to a dental lab. You'd be</p> <p>16 surprised how few doctors actually work with gold.</p> <p>17 Q. I'm not following what you're saying.</p> <p>18 A. Dental labs they know. They see. We do</p> <p>19 15,000, say, BruxZirs a week. How many you think</p> <p>20 a dentist does a week? Maybe two a month. The</p> <p>21 labs see hundreds of thousands of models of</p> <p>22 patients. They have a different appreciation for</p> | <p style="text-align: right;">Page 188</p> <p>1 what they've been doing for years and years and</p> <p>2 years and that's what they're doing now.</p> <p>3 Q. Prior to Glidewell coming out with a</p> <p>4 BruxZir crown, gold was considered the best</p> <p>5 solution for bruxers for crowns in the back;</p> <p>6 correct?</p> <p>7 A. I'm just talking between you and me as a</p> <p>8 person that works for a lab and has an</p> <p>9 understanding of things that might be idealic.</p> <p>10 That's all. There's very few gold crowns</p> <p>11 prescribed compared to all crowns prescribed in</p> <p>12 the United States. A very small number.</p> <p>13 Q. You don't have an understanding as to</p> <p>14 whether dentists in 2009 or 2010 would have been</p> <p>15 prescribing gold crowns for their bruxer patients?</p> <p>16 A. Some would but only doctors who prescribe</p> <p>17 gold crowns. Not that many do.</p> <p>18 Q. Why do you say not that many do it?</p> <p>19 A. It's just the numbers. I don't know why</p> <p>20 they do or don't.</p> <p>21 Q. Are you aware that Dr. DiTolla has</p> <p>22 testified he thinks gold is the best solution for</p> |

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1 bruxers?

2 A. Sure.

3 Q. At the time Keating dental arts was

4 marketing its new KDZ Bruxer crown at that time,

5 gold would have been a popular choice as a crown

6 for bruxers; correct?

7 A. It's not in our numbers.

8 Q. I'm just asking about what dentists

9 prefer in terms of materials used in crowns?

10 A. We would only know by what they

11 prescribe.

12 Q. How do you know what dentists are

13 prescribing?

14 A. Because we get their prescription and we

15 fill the order. That's our business.

16 Q. And how do you know if it's for bruxer

17 patients?

18 A. We don't know.

19 Q. Well, then you don't know whether

20 dentists at the time that Keating dental arts was

21 marketing its new product in May, 2011, whether

22 dentists were choosing gold as the preference of

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1 choice for their bruxer patients; is that correct?

2 A. That's not what I'm saying. What I'm

3 saying is our numbers show that very few doctors

4 prescribe gold crowns. That's all I'm saying.

5 Q. What I'd like you to do is answer my

6 question which is at the time that Keating dental

7 arts was coming out with the KDZ Bruxer at that

8 time gold was a popular choice as a material to

9 use for bruxer patients who had destroyed other

10 crowns?

11 A. Not based on our numbers. Our numbers

12 show that it is prescribed very infrequently

13 period.

14 Q. So your certify is no to that?

15 A. On many levels. He came out with his --

16 you mean he came out with his full contour

17 zirconia crown. Other labs were selling that

18 before KDA dental arts. The same thing goes for

19 everyone, not just KDA dental arts and before that

20 many labs were using porcelain fused to zirconia

21 crowns and that goes back even further.

22 Q. Are you aware that Mr. Keating testified

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1 that he came out with this product to meet the

2 requests of his dentist who wanted a stronger

3 crown that wasn't gold for his bruxer patients?

4 A. I'm not aware of his testimony. I know

5 he did have his deposition taken but I have no

6 idea what he said.

7 Q. Does that surprise to you hear that?

8 A. It doesn't surprise me that someone would

9 say that.

10 Q. Why do you characterize it that way?

11 A. It just makes sense that someone would

12 say something like that. It sounds like our

13 marketing.

14 Q. Because he's marketing this product to

15 dentists to use with their bruxer patients;

16 correct?

17 A. I don't see him.

18 Q. I see the work bruxer?

19 A. Only in his mark. It's not in there

20 anyplace else.

21 Q. If I'm a dentist, and I see the word

22 bruxer isn't that going to tell me this is for

Page 192

1 bruxer patients?

2 A. You mean it might suggest to a dentist

3 that if the word bruxer is in there, it must be

4 strong enough to hold up to a bruxing patient and

5 thereby be a ceramic that is very durable? You

6 mean that? Is that what you're saying?

7 Q. No.

8 A. Oh, I don't know what you're saying then.

9 Q. I'm saying I'm a dentist reading this ad

10 Exhibit 139. I see the word bruxer in it.

11 Q. Okay.

12 A. I'm going to think of a patient suffering

13 from bruxism; correct?

14 A. I'm going to think probably a lot of

15 dentists looked at this thought of what we've been

16 advertising for all of the time before this. A

17 full contour zirconia crown and I'm thinking what

18 went through their minds is what I just described

19 to you.

20 Q. So I'm a dentist and I went to dental

21 school. I learned about bruxism. I learned about

22 bruxers. I've known about it for decades. Now I

| | |
|--|---|
| <p style="text-align: right;">Page 193</p> <p>1 read this and I'm going to think that Mr. Keating 2 is misspelling Glidewell's trademark? Is that 3 what you're saying? 4 A. I think that he probably is trying to 5 ride on the coat tails of a company that spent a 6 lot of money advertising a crown that is 7 confusingly similar to ours. So I think they 8 probably would be thinking that they would be 9 getting material -- a crown made from a material 10 exactly as ours would be. 11 Q. Well, right in the mill of Exhibit 139 is 12 says exclusively from Keating dental arts? 13 A. Exactly. 14 Q. If he's confusingly similar to your 15 crown, why is he saying that? 16 A. I would think that probably that has to 17 do with the fact that it's all new. All new 18 something like maybe he's making his own material 19 I don't know. Do you think? Is that what it 20 would be? I don't know. 21 Q. That's my question for you. What is it 22 that you think -- what connection between Keating</p> | <p style="text-align: right;">Page 195</p> <p>1 what does that mean? 2 A. Well, we put a lot of money into 3 advertising that mark, and it's got a favorable 4 review by a lot of dentists, and when doctors see 5 something like that, they can confuse that with 6 ours because it looks very similar. 7 Q. Because of the word bruxer? 8 A. Especially the b-r-u-x. 9 Q. What about the e-r on the end of b-r-u-x? 10 A. That would be confusing too. 11 Q. What about the KDZ part? That part 12 confusing? 13 A. Definitely the Z. It do you understand 14 like the zirconia they probably heard about. 15 Q. It makes sense to have a Z for zirconia 16 because this is Keating dental arts full contour 17 zirconia crown; correct? 18 A. It doesn't seem to me that way. It seems 19 like it would be more like KDA bruxer, not KDZ 20 bruxer. 21 Q. You're aware that Keating dental arts has 22 other zirconia products that are called KDZ;</p> |
| <p style="text-align: right;">Page 194</p> <p>1 dental arts and Glidewell are you thinking is 2 going to be in the minds of dentists when they see 3 Exhibit 139? 4 A. I'm thinking they see that and it's 5 something they heard of before because they've 6 been advertised to and they've maybe seen reviews 7 about it in dental magazines and go they think 8 this is the product that they heard about, others 9 talking about, maybe other dentists that have used 10 it and liked it. Maybe they saw something at one 11 of the dental shows they went to for CEU education 12 talking about something that Glidewell 13 Laboratories came out and I'm pretty sure that's 14 exactly what he's trying to do because we know 15 others have tried to do the same thing. 16 Q. When you say the same thing, what's the 17 same thing? 18 A. Trying to ride on the coat tails of all 19 the advertising that Glidewell Laboratories has 20 done in introducing it's full contour zirconia 21 crowns. 22 Q. And when you say ride the coat tails,</p> | <p style="text-align: right;">Page 196</p> <p>1 correct? 2 A. I think that just happened right about 3 the time he started doing this. I don't know that 4 ever happening before that. 5 Q. Well, he had a product called KDZ that 6 was a zirconia product that used KDZ and that was 7 before the KDZ bruxer spelled B-r-u-x-e-r came out 8 are you aware of that? 9 A. I'm not. 10 Q. In fact he was selling it as far back as 11 2006. Are you aware of that? 12 A. I'm not. 13 Q. So the KDZ by itself is not confusingly 14 similar with Glidewell do you agree? 15 A. The KDZ has nothing to do with Glidewell 16 anymore than any of the other authorized dental 17 labs than actually sell the BruxZir product. It 18 could be a name of any dental laboratory. 19 Q. And, in fact, I mean when I see KDZ here, 20 it looks to me like Keating dental zirconia. 21 Would you agree? 22 A. I guess in hindsight you can make it say</p> |

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1 anything you want. To me it's kind of funny that
2 it says that when I've actually seen on his --
3 some of his information he does use KDA for his
4 product.
5 Q. Okay. And Keating dental arts is an
6 Akron for Keating dental arts; correct?
7 A. That makes more sense to me because we
8 don't have authorized dental labs and say the name
9 is Keller and then they all of a sudden change the
10 two Ls to Zs. They say Keller and then they have
11 our brand name. They don't change their name to
12 Keller spelled with two Zs instead of two Ls and
13 then put bruxer after it. It seems like that's
14 what he's done here. Instead of KDA it's KDZ.
15 Q. So even the KDZ aside from the bruxer you
16 think is suggestive of Glidewell Laboratories?
17 A. I think it could be. If someone
18 remembers the B-r-u-x and the fact it had a Z in
19 it and they see KDZ Bruxer and we know persons who
20 were confused about the fact they thought he was
21 actually selling our product.
22 Q. What are you referring to? What people?

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1 A. Persons that prescribed our crown on his
2 Rxes and used our brand name.
3 Q. How do you know what's been prescribed on
4 his forms?
5 A. They wrote it down in the prescription
6 blank. They wrote our brand name on their
7 prescription form.
8 Q. Now, have you seen this?
9 A. I have.
10 Q. And when did you see this?
11 A. Fairly recently. In the last three
12 months I'd say.
13 Q. And how did you get those prescription
14 forms?
15 A. You provided them to us.
16 MR. TACHNER: There were redacted forms
17 used in my opposition to your motion to amend the
18 answer.
19 MR. JANKOWSKI: They were redacted in --
20 I'm sorry. They were submitted -- they were filed
21 with the court.
22 MR. TACHNER: Yes.

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1 MR. JANKOWSKI: In connection with with
2 which motion?
3 MR. TACHNER: You filed an motion to
4 amended your answer we filed an opposition. In
5 that opposition two redacted forms that the
6 witness is referring to were included, and a copy
7 of that opposition was sent to the client
8 including the witness. Now, that's exactly the
9 way the confidentiality agreement says we can show
10 the court material that you've marked attorneys
11 eyes only which is to redact the material that
12 caused it to be so marked. We redacted the name
13 of the doctor and the name of the patient.
14 MR. JANKOWSKI: Okay. I just don't
15 recall the filing itself or even seeing the
16 filing.
17 MR. TACHNER: You'll have to check it
18 out.
19 MR. JANKOWSKI: It wasn't in connection
20 with with the partial summary judgment motion.
21 MR. TACHNER: No.
22 MR. JANKOWSKI: This is the recent

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1 motion.
2 MR. TACHNER: This is your motion.
3 MR. JANKOWSKI: Okay.
4 BY MR. JANKOWSKI:
5 Q. So aside from what you might have seen in
6 the last three months and, again, going back to
7 the time frame May, 2011, when Exhibit 140 was
8 sent to Keating dental arts, you hadn't seen any
9 prescription forms of Keating dental arts at that
10 time; correct?
11 A. You're talking about now No. 140?
12 Q. Yes. Going back to the time frame of
13 Exhibit 140.
14 A. Okay. At this time I don't believe that
15 he was using this mark in commerce. I have no
16 knowledge of it if he was. This was the first
17 time, days before this date I'm pretty sure, that
18 I first became aware of his application for the
19 mark, and that's really all I know at that time is
20 that he had applied for the mark. I'm not aware
21 of the fact he was actually using it in commerce
22 anyway.

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1 Q. I'll represent for you that Keating
2 dental arts has provided information in the case
3 that shows that the KDZ bruxer was associated with
4 a full zirconia crown and that name was being used
5 at least as early as May, 2011, and perhaps as
6 early as April, 2011. So with that representation
7 in mind, when this letter was being written or you
8 authorized Exhibit 140 to be sent, you were not
9 aware of incidences of actual confusion between
10 Mr. Keating's products and Glidewell's mark;
11 correct?

12 A. That's correct.

13 Q. Now, you're saying other parties have
14 also been riding the coat tails of Glidewell's
15 mark; correct?

16 A. That's true.

17 Q. Is that also by using the word brux,
18 b-r-u-x?

19 A. Sometimes that and sometimes b-r-u-x-e-r.

20 Q. Sometimes bruxer, b-r-u-x-e-r?

21 A. Yeah.

22 Q. Now, you would agree that Mr. Keating and

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1 these other parties can use the word bruxer in
2 their promotional materials to refer to patients
3 with bruxism; correct?

4 A. I think that that is something that's
5 permed. We don't stop anyone from doing that.
6 That isn't anything he did do here. I don't think
7 it's great marketing to pigeonhole a product that
8 way, and he probably sees it that way too because
9 it's not mentioned in his advertising anywhere in
10 here with you someone could do that ideal nor
11 productioners.

12 Q. In fact, ideal for bruxers is a saying
13 Glidewell uses, correct, in its marketing?

14 A. I'd have to look at it but it seems like
15 we do talk about that.

16 Q. It also uses the moto more brawn than
17 beauty; correct?

18 A. That's true. That was something early on
19 was decided would be some effective marketing.

20 Q. And Mr. Keating can refer to his full
21 contour zirconia solution as ideal for bruxers as
22 well; correct?

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1 A. I guess he could. I don't see his doing
2 that but I'm sure he could. Instead it's
3 uncompromising aesthetics, outstanding strength,
4 and flawless fit.

5 Q. It sounds like he's promoting the product
6 which is understandable; correct?

7 A. Definitely.

8 Q. And does he do anything on here that's
9 trying to suggest to the dentists that he's
10 affiliated as an authorized lab of Glidewell
11 Laboratories?

12 A. He does not have anything on there saying
13 he's an authorized lab, no.

14 Q. And, in fact, at this time, May, 2011,
15 Glidewell had its authorized lab program in place
16 for some time; correct?

17 A. I don't know how long it had been in
18 place but we can look into that.

19 Q. And there were a number of authorized
20 labs a large number of authorized labs of
21 Glidewell Laboratories by May, 2011 right for sure
22 yes?

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1 Q. And those labs would be using BruxZir;
2 correct?

3 A. That's correct.

4 Q. Which Mr. Keating is not using; correct?

5 A. He's not.

6 Q. Why don't we take a short break.
7 (Recess taken from 3:55 p.m. to
8 4:07 p.m.)

9 BY MR. JANKOWSKI:

10 Q. I'm going to show you an exhibit that the
11 court reporter has marked as Exhibit 141. It's a
12 document produced by Glidewell in this case
13 bearing production No. GL 241 from page 25 of 99
14 to 49 of 99. I'll have you take a look at that
15 exhibit.

16 (Exhibit No. 141 was marked for
17 identification.)

18 THE WITNESS: This name looks familiar.

19 BY MR. JANKOWSKI:

20 Q. That's my question actually. Do you
21 recognize -- it's a series of e-mails and written
22 correspondence that includes your name on it. I'd

| | |
|---|--|
| <p style="text-align: right;">Page 205</p> <p>1 like you to tell me in you recognize this?</p> <p>2 A. I recognize that.</p> <p>3 Q. And, in fact, we've been discussing today</p> <p>4 about third parties using that's correct that</p> <p>5 might be confusingly similar to Glidewell is this</p> <p>6 similar to correspondence you had with a third</p> <p>7 party that you believe was using a mark that was</p> <p>8 confusingly similar to Glidewell's mark?</p> <p>9 A. Yes.</p> <p>10 Q. And so this is -- again, this was</p> <p>11 produced to us this way by Glidewell. This is a</p> <p>12 true and correct copy of the correspondence you</p> <p>13 had with this third party?</p> <p>14 A. Let me see here exactly how this is</p> <p>15 arranged.</p> <p>16 Q. It appears that it's as e-mails often are</p> <p>17 the farther back in the document you get, the</p> <p>18 earlier the communications are because the e-mails</p> <p>19 get put later on top of earlier.</p> <p>20 A. Okay. This is my recollection of it, and</p> <p>21 I would just add that it actually began</p> <p>22 January 19, and that would have been the first</p> | <p style="text-align: right;">Page 207</p> <p>1 aware of, and that is a front for crowns from</p> <p>2 China as I subsequently learned.</p> <p>3 Q. On the page marked page 48 of 99 there's</p> <p>4 the statement in your communication to fusion. It</p> <p>5 says your promotion in lab management today of</p> <p>6 full solid bruxer, spelled b-r-u-x-e-r, zirconia</p> <p>7 is using a similar mark where there's an</p> <p>8 appreciable likelihood of confusion. Do you see</p> <p>9 that?</p> <p>10 A. I do.</p> <p>11 Q. And bruxer is in all bold. Do you see</p> <p>12 that?</p> <p>13 A. I do.</p> <p>14 Q. This is an example of the word bruxer</p> <p>15 being the source of the confusion in your mind;</p> <p>16 correct?</p> <p>17 A. Correct.</p> <p>18 Q. Is it the appearance of the mark or just</p> <p>19 the word bruxer however it appears, however font</p> <p>20 or color?</p> <p>21 A. It is just the way that it appears there.</p> <p>22 Q. Okay. And your interpretation here is</p> |
| <p style="text-align: right;">Page 206</p> <p>1 e-mail. I'm not seeing anything else like a</p> <p>2 picture of anything as an example which might have</p> <p>3 been on the original. I don't know where it would</p> <p>4 go if it ever had been there. It seemed like it</p> <p>5 would have been probably showing up in there as</p> <p>6 something that didn't print or something. I'm</p> <p>7 just guessing. I'd have to go back to actually</p> <p>8 the back that I sent or maybe it shows up later</p> <p>9 on. I don't know. Usually I put an example of</p> <p>10 what it is I'm seeing where it looks like they're</p> <p>11 using the very mark that is colored gold crown to</p> <p>12 ours. I see I did put in there what the spelling</p> <p>13 of it is.</p> <p>14 Q. I see on page 48 of 99 it looks like</p> <p>15 you're making a reference to -- first of all, let</p> <p>16 me just state, for the record, your e-mail is</p> <p>17 dated January 19, 2011. It's being sent to fusion</p> <p>18 dental lab solution; correct?</p> <p>19 A. Yes, and I remember that name too because</p> <p>20 that was the first infringement letter I ever</p> <p>21 sent, and that's the first infringement letter</p> <p>22 I -- that's the first active infringement I am</p> | <p style="text-align: right;">Page 208</p> <p>1 again that this is confusingly similar to</p> <p>2 Glidewell's BruxZir mark; correct this is exactly</p> <p>3 that this letter is saying; correct?</p> <p>4 A. That's true.</p> <p>5 Q. If you turn to page 47 of 99 so move</p> <p>6 forward one page, we get to see fusion dental</p> <p>7 lab's response to your letter. Do you see that?</p> <p>8 A. I do.</p> <p>9 Q. How did they respond?</p> <p>10 A. They responded with the fact that the</p> <p>11 word brux they put it in quotes is a common</p> <p>12 clinical term for a person with bruxism.</p> <p>13 Q. Right. Which is a true statement;</p> <p>14 correct?</p> <p>15 A. I think so. I'm not a doctor, but I</p> <p>16 think all doctors know what that would mean if</p> <p>17 they saw that.</p> <p>18 Q. Right. And that's all they say. It's a</p> <p>19 very short communication they sent; correct?</p> <p>20 A. That's true.</p> <p>21 Q. And then it looks like you followed up</p> <p>22 with another communication after that, correct,</p> |

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| <p style="text-align: right;">Page 209</p> <p>1 asking them to cease and desist despite their 2 explanation of what they think the word bruxer 3 means in their mark; correct? 4 A. On the 21st? 5 Q. Yes? 6 A. Let me see and go back to this date. 7 5:03 p.m., yeah. 21st. It looks like the next 8 morning. Yeah, this looks like the 19th at 9 3:27 p.m. and by the next morning they're going to 10 see if we're serious and so I followed up with a 11 further explanation it looks like on the follow 12 morning. 13 Q. And then on Friday, the 21st about 14 16 minutes later they responded again and said 15 that the name of their crown is full solid bruxer 16 zirconia, and they say which is the description of 17 the type of crown we offer, a full solid bruxer 18 zirconia crown for bruxers, patient of bruxism. 19 Please read or advertise many precisely. So they 20 don't think they're trying to be similar to 21 Glidewell at all, do they? 22 A. Naturally not. They would like to just</p> | <p style="text-align: right;">Page 211</p> <p>1 Q. I think you testified to that earlier as 2 well that that's one of the sources of the 3 confusion is the pronunciation; correct? 4 A. That's a possibility you you never know 5 how someone is going to pronounce something that's 6 giving them an opportunity to see what they're 7 going to say next. I see they say no it's not 8 pronounced the same for them it might not be who 9 knows. 10 Q. On page 41 of 99, we're up to April 19. 11 So this is a little further along in time. It 12 looks like you were sending additional information 13 to them basically, a little stronger letter. 14 A. That's correct. 15 Q. And then I also see if I move forward to 16 page 39 of 99, I see something referencing the 17 notice of a filing of a complaint in U.S. District 18 Court. Do you see that? 19 A. I do. 20 Q. So did Glidewell file a lawsuit against 21 fusion dental in district court? 22 A. No.</p> |
| <p style="text-align: right;">Page 210</p> <p>1 keep using that so long as they're allowed to. Of 2 course, this is as of 2011, and we've already been 3 on the market now since June, 2009, and I don't 4 know how many millions of dollars we've spent. So 5 sure, they would love it if they could just do 6 that. 7 Q. But do you think they -- are they somehow 8 trying to copy Glidewell? Is this innocent 9 infringement or malicious infringement? 10 A. I don't know if you call it malicious but 11 it's definitely intention infringement just like 12 you associate with China that they could get away 13 with anything that they do. I'm surprised they 14 didn't say made in Switzerland while they were at 15 it. 16 Q. If you turn to page 43 of 99, there's a 17 communication that you sent still on January 12. 18 Now it's in the afternoon. This is in response to 19 them saying there's no confusing similarity 20 between the marks. You state it is pronounced the 21 same, isn't it? Do you see that? 22 A. I do.</p> | <p style="text-align: right;">Page 212</p> <p>1 Q. I'm confused then. What's been 2 referenced on page 39 of 99? 3 A. It is a cease and desist letter in the 4 form of a notice of complaint. 5 Q. This says notice of filing of complaint? 6 A. Right. It says subject notice of 7 complaint and in block letters notice of filing of 8 complaint. 9 Q. So you weren't trying to put them on 10 notice that you'd filed a complaint against them? 11 A. They might draw that conclusion from 12 that. I don't know that they knew that it had 13 been filed or hadn't at this point. 14 Q. Well, had you prepared a complaint to 15 file against them? 16 A. No, only this, something that would be -- 17 something to get their attention. I especially 18 love the block letters. 19 Q. Right. I see that. And did it get their 20 attention? 21 A. Apparently it did. 22 Q. And why do you say that?</p> |

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1 A. They stopped using the infringing mark in
2 their advertising.
3 Q. I guess the communication on page 36 is a
4 repeat it looks like of the April 19 communication
5 it looks like.
6 A. Well, maybe it's part of something that
7 precedes it.
8 Q. I think what it is is she's
9 communications seem like they're duplicated in the
10 production?
11 A. Maybe something precedes it and has that
12 as a part of it. It looks like like the date is
13 January 19, 2011.
14 Q. Right. That's when they start?
15 A. It looks like right after that is
16 attached to it this second notice of trademark
17 infringement.
18 Q. The last communication I'm seeing on here
19 is the all capital letters communication that you
20 sent to fusion on May 16, 2011. Would you agree?
21 A. Let me see the date of that. That is
22 dated May 16, 2011.

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1 Q. Right.
2 A. And these are things are dated --
3 Q. Everything after that seems to be
4 dated --
5 A. This is before that or it's dated
6 January 21. That might be an attachment to
7 something prior to it. I'd have to go back to the
8 very beginning here.
9 Q. What I'm inclined to do here --
10 A. I think that is and it's out of order. I
11 think it might be the last one and all of these
12 were earlier.
13 Q. Let me mark the Exhibit in a way which is
14 going to be less confusing. If it's okay with
15 you, it looks to me like this is just repeating
16 what we just went through up to this
17 communication.
18 A. Yes. I think that would be the last one
19 and these others --
20 Q. That's the last one.
21 A. Would be January 21.
22 Q. Let me try to rebuild it in that way. So

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1 starting on 39.
2 (Discussion off the record.)
3 MR. JANKOWSKI: Let me just state, for
4 the record, then Exhibit 141 is, for the record,
5 GL 241 from page 39 of 99 through 49 of 99.
6 BY MR. JANKOWSKI:
7 Q. Okay, Mr. Allred, I think you already
8 testified that -- so the communication you sent on
9 May 16, notice of filing of complaint in U.S.
10 District Court was successful. They did react and
11 they changed the name of their product; is that
12 correct?
13 A. I don't know what they changed their name
14 to, but they did stop using the confusingly
15 similar mark.
16 Q. They changed it to a name you were
17 satisfied with?
18 A. Yes.
19 Q. That's why there's no more correspondence
20 on that?
21 A. Yes.
22 (Discussion off the record.)

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1 BY MR. JANKOWSKI:
2 Q. So next I'm going to hand you a document
3 which has been marked by the court reporter as
4 Exhibit 142. It is -- it was produced by
5 Glidewell in this case with production Nos. GL 241
6 from page 54 of 99 through 57 of 99.
7 (Exhibit No. 142 was marked for
8 identification.)
9 BY MR. JANKOWSKI:
10 Q. If you can just briefly look at that and
11 tell me if you recognize it.
12 A. Pittman dental. I recognize that.
13 Q. And, in fact, this is another situation
14 where there's multiple communications, a string of
15 communications. I guess there's two in this
16 instance; right? One on February 9, 2011, and one
17 on February 15, 2011?
18 A. It looks like a notice that is
19 substantially similar to the very first one I ever
20 sent and then beyond that perhaps a response to
21 something they said.
22 Q. Well, on the front page it says hello

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| <p style="text-align: right;">Page 217</p> <p>1 Rudy. Thank you for your call and you 2 explanation. It looks like to me like Pittman 3 called you. 4 A. Okay. 5 Q. Do you have a recollection of that? 6 A. Maybe if I read what I wrote here, I 7 would remember his call. 8 Q. Sure. 9 A. Okay. I remember this. But I don't 10 remember his call. 11 Q. This is another instance of a third party 12 using a confusingly similar mark in the position 13 of Glidewell; correct? 14 A. From the looks of it he was calling and 15 must have expressed in kind of feeling -- is there 16 more from this anything else to do with Pittman in 17 the pile? 18 Q. I don't believe so. 19 A. Okay. So I responded. It looks like I'm 20 still providing some arguments that might make 21 sense to him as far as why we would want to stop 22 him from using a confusingly similar mark. It</p> | <p style="text-align: right;">Page 219</p> <p>1 A. It looks like. I'm not sure if that 2 printed. I must have printed an image there it 3 looks like. 4 Q. And you explained to Pittman dental just 5 as you explained to fusion how bruxer was 6 confusing with Glidewell's mark; correct? 7 A. Yes. 8 Q. And if you look on the front page of 9 Exhibit 142, you make the same argument again that 10 BruxZir and bruxer sounds the same; correct? 11 A. I did write that. 12 Q. Now, do you know did Pittman change their 13 name? 14 A. They did, yes. 15 Q. I notice that you cc'd Robin Bartolo on 16 this e-mail. Do you see that? 17 A. I do. 18 Q. And why are you cc'ing Mr. Bartolo? 19 A. I don't know. I'd have to look at this 20 letter right here. 21 Q. Just to help guide your attention I think 22 at the top of page 55 of 99 you make reference to</p> |
| <p style="text-align: right;">Page 218</p> <p>1 doesn't look like we've necessarily reached an 2 understanding at this point. So I don't know 3 what -- if there's any further things along here. 4 Q. And if you look on page 56 of 99, you see 5 the letter that you sent. As I think you just 6 testified, it's very similar to the letter you 7 sent to fusion dental; correct? 8 A. Similar. 9 Q. Did you have a template letter you were 10 sending -- 11 A. Oh, yeah, you bet. We have a place in 12 here that would change as far as what the mark was 13 they were using. 14 Q. On page 56 of 99 you can see that halfway 15 down the page. In this instance Pittman was using 16 bruxer in all cap B-r-u-x-e-r, all zirconia crown; 17 correct? That was the colored gold crown mark? 18 A. It looks like from the back that's 19 exactly what it looked like. 20 Q. Here's an example where you did attach a 21 visual on the last page of Exhibit 142, correct, 22 of their mark?</p> | <p style="text-align: right;">Page 220</p> <p>1 Mr. Bartolo's contact information. 2 A. I see yes cc'd Robin Bartolo on there. 3 Q. Why did you CC? 4 A. It looks to me that that goes along with 5 what is at the bottom of this second e-mail that's 6 apparently responding to a telephone conversation 7 that I had with him. 8 Q. Isn't the reason you're cc'ing 9 Mr. Bartolo that you want to offer Pittman dental 10 labs the opportunity to join Glidewell's family of 11 authorized labs? 12 A. That's what it says here in the last 13 paragraph. 14 Q. Because since Pittman obviously is 15 offering an all zirconia crown and this is an 16 opportunity, you're saying, for them to join 17 Glidewell and sell BruxZir crowns; correct? 18 A. Well, I don't know what our telephone 19 conversation was but it obviously a way where he 20 can actually promote his services using the very 21 trademark that looked to me like he was trying to 22 copy. He can use the real trademark.</p> |

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| <p style="text-align: right;">Page 221</p> <p>1 Q. Now, do you think he was trying to copy a 2 trademark or was he just using the word brux in 3 reference to patients with bruxism? 4 A. No I'm pretty sure he was trying to copy 5 something he realized by then was very popular, a 6 name doctors might -- it might resonate with 7 doctors. And did Pittman push back and say they 8 were not confusingly similar? 9 A. I don't see that here. I don't remember 10 what he might have said in whatever telephone call 11 we had. 12 Q. Whatever he said you responded to it by 13 point out the similarity in pronunciation; right? 14 A. I sent another e-mail February 14. 15 Almost five days later. He must have called 16 sometime after Wednesday and it looks like it was 17 probably Monday and I probably wrote him back. 18 Q. That's all I can guess from this. Thank 19 you for your call. He might have even left a 20 voicemail for all I know. It could have been 21 that? 22 Q. You don't recall?</p> | <p style="text-align: right;">Page 223</p> <p>1 Q. And so -- 2 A. And even then it probably would have been 3 better to say all ceramic crowns irrespective of 4 patients with parafunctional problems, was counter 5 intuitive as a material of choice for the 6 restoration of posterior teeth but obviously I 7 didn't put it in that many words. 8 Q. This is suggestive that that the 9 telephone call you had with the representative 10 from Pittman Dental raised the issue that they 11 were using the word bruxer spelled b-r-u-x-e-r as 12 a reference to a patient with bruxism; correct? 13 A. Could be. I don't know that this is 14 suggesting it but he could have been raising that 15 point, sure. 16 Q. Okay. You can set that one aside and let 17 me show you what's been marked as Exhibit 143. It 18 bears production No. GL 241 page 58 of 99 through 19 page 70 of 99. 20 A. Okay. 21 (Exhibit No. 143 was marked for 22 identification.)</p> |
| <p style="text-align: right;">Page 222</p> <p>1 A. Let me see again. Thank you for your 2 call and explanation today concerning the use -- 3 Q. You don't recall what his explanation 4 was? 5 A. Pittman. I'm not even sure where they're 6 located. Let me see here. Centennial circle, 7 Gainesville, Georgia. It just doesn't ring a 8 bell. 9 Q. If you look on the first page of 10 Exhibit 142 and you go down to the fifth paragraph 11 down, it says prior to the promotion of BruxZir 12 mark, the use of all ceramic crowns even with 13 patients with parafunctional problems was counter 14 intuitive. Do you see that? 15 A. I see that. I see it. It's not very 16 artfully worded. It should have said even for 17 patients with parafunctional problems was counter 18 intuitive for restoration of posterior teeth is 19 probably what I was getting at there. 20 Q. Fair afunctional problems is a reference 21 to bruxism; correct? 22 A. That is, yes.</p> | <p style="text-align: right;">Page 224</p> <p>1 BY MR. JANKOWSKI: 2 Q. This bears to be a communication with a 3 dental laboratory called R dental. Do you recall 4 having an e-mail exchange with them? 5 A. I do. 6 Q. In fact, this is just another example of 7 the same type of exchange you had with fusion and 8 you had with Pittman; correct? 9 A. It is. I see there's an image there that 10 doesn't come through. Maybe it does later, but 11 other than that it looks like probably -- the 12 spacing looks like it got changed around a little 13 bit but that letter looks like the other letter to 14 fusion even. I don't see if there's additional 15 facts added. It does have the word R brux in 16 there. 17 Q. Where are you seeing R brux? Which page? 18 A. Page 69. 19 Q. Right towards the top; correct this is an 20 example where they're not using the entire word 21 bruxer but rather just the form brux, b-r-u-x; 22 correct?</p> |

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| <p style="text-align: right;">Page 225</p> <p>1 A. That's correct.</p> <p>2 Q. You're not saying the R part is colored</p> <p>3 gold crown you're saying the brux part is;</p> <p>4 correct?</p> <p>5 A. That's correct.</p> <p>6 Q. It's fair to say that RDent disagreed</p> <p>7 that they should not be allowed to use that name;</p> <p>8 correct?</p> <p>9 A. They may have initially.</p> <p>10 Q. And do you know what happened with RDent?</p> <p>11 Did they change their name?</p> <p>12 A. They did.</p> <p>13 Q. Do you know whether they became an</p> <p>14 authorized lab?</p> <p>15 A. I don't know if they did or not. It</p> <p>16 seemed to me at this point in time that's what</p> <p>17 they were planning on doing.</p> <p>18 Q. And, in fact, again, I think you offered</p> <p>19 to put them in communication with Mr. Bartolo;</p> <p>20 correct?</p> <p>21 A. Correct. That's how you would become an</p> <p>22 authorized dental laboratory. You'd have to order</p> | <p style="text-align: right;">Page 227</p> <p>1 correct?</p> <p>2 A. Correct.</p> <p>3 Q. And do you recall having an e-mail</p> <p>4 exchange with Authentic Dental lab?</p> <p>5 A. I don't recall that for sure. I don't</p> <p>6 remember Whitney but I do recall authentic.</p> <p>7 Q. And, in fact, this has another example of</p> <p>8 the form letter that we talked about earlier;</p> <p>9 correct?</p> <p>10 A. It is there, and it looks --</p> <p>11 Q. They're using the mark brux, B-r-u-x,</p> <p>12 crowns which is in Glidewell's mind confusingly</p> <p>13 similar; correct?</p> <p>14 A. That's true. And I guess there's a copy</p> <p>15 of that use attached.</p> <p>16 Q. Right. It shows the assured dental lab</p> <p>17 website where it was copied from; correct?</p> <p>18 A. True.</p> <p>19 Q. And what's your understanding? Did</p> <p>20 Authentic Dental lab change its mark in response</p> <p>21 to your communication?</p> <p>22 A. Yes, they did. I think it's almost even</p> |
| <p style="text-align: right;">Page 226</p> <p>1 the blocks. It looks to me like as far as I knew</p> <p>2 back then he had decided to offer the product that</p> <p>3 would allow him to be a certified laboratory.</p> <p>4 Q. Which means the BruxZir milling blocks?</p> <p>5 A. That's right, BruxZir. And he was</p> <p>6 wanting to know if he could change it after he</p> <p>7 finished using the prescriptions that he had that</p> <p>8 already had the confusingly similar mark on it.</p> <p>9 Q. Okay. You can set that one aside. Thank</p> <p>10 you.</p> <p>11 Next I'll show you what the court</p> <p>12 reporter has marked Exhibit 144 which bears</p> <p>13 production Nos. GL 241, page 7 of 99 through</p> <p>14 page 9 of 99.</p> <p>15 (Exhibit No. 144 was marked for</p> <p>16 identification.)</p> <p>17 BY MR. JANKOWSKI:</p> <p>18 Q. If you can look at that and tell me if</p> <p>19 you recognize it?</p> <p>20 A. Authentic.</p> <p>21 Q. Right. This appears to be an e-mail</p> <p>22 exchange between you and Authentic Dental lab;</p> | <p style="text-align: right;">Page 228</p> <p>1 false advertising because they talk about</p> <p>2 authentic zirconia which almost conveys in that</p> <p>3 context the fact that they made their own blocks</p> <p>4 because Lava is a brand name of 3M. And as far as</p> <p>5 I know authentic dental lab is a dental lab that</p> <p>6 is like 15,000 other dental labs, and they don't</p> <p>7 make the material that they make their zirconia</p> <p>8 crowns out of.</p> <p>9 Q. Do you believe that -- where did</p> <p>10 authentic get their zirconia? Do you know?</p> <p>11 A. Maybe Lava. I don't know. I don't know</p> <p>12 if it was any other material. No clue. Could</p> <p>13 have even been our material. You don't really</p> <p>14 know -- I guess you do know because they weren't</p> <p>15 buying our blocks at least from us directly and</p> <p>16 apparently from this they weren't or it would</p> <p>17 probably be on here.</p> <p>18 Q. If they were buying from Glidewell direct</p> <p>19 you'd know about that?</p> <p>20 A. I'd know about that.</p> <p>21 Q. On page 8 of 99 on the bottom of your</p> <p>22 form letter or template you again offer them that</p> |

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| <p style="text-align: right;">Page 229</p> <p>1 opportunity to join the list of BruxZir authorized 2 dental laboratories; correct? 3 A. That's true. 4 Q. You say if you wish to be on the list 5 call Glidewell direct which is really Mr. Bartolo; 6 correct? 7 A. True. 8 Q. Okay. You can set that aside. Thank 9 you. Next I'd like to have you look what the 10 court reporter has mark as Exhibit 145 bearing 11 production Nos. GL 241, page 4 of 99 through 12 page 6 of 99. 13 (Exhibit No. 145 was marked for 14 identification.) 15 THE WITNESS: Assured dental lab. Just 16 one letter. 17 BY MR. JANKOWSKI: 18 Q. This one it's just one letter you sent to 19 assured on April 18, 2011; correct? 20 A. It looks like one letter, and it may 21 be . . . 22 Q. Do you recall writing to assured dental</p> | <p style="text-align: right;">Page 231</p> <p>1 going to allow and they saw it our way. 2 Q. The dental lab is not located in Taiwan; 3 right? 4 A. No, but their material is. I remember 5 this lab. This is a lab that's like a front for 6 foreign-made crowns. If I remember correctly, 7 that is the same outfit. I remember Portland, 8 Oregon. What I'm not quite sure about I don't 9 know if it's China. I think it could be either 10 the Philippines or Taiwan. I don't know for sure 11 that it's China, but it could be from China. I 12 forget exactly where but it was outside the 13 country. Vietnam for all I know, but it was 14 definitely foreign-made crowns. 15 Q. Not just zirconia but crowns themselves? 16 A. I don't know about the zirconia. I don't 17 know what block it would be. I don't think anyone 18 would know probably from their advertising that 19 certainly that would help if someone was not 20 trying to create confusion they might actually 21 disclose the fact that they were using a zirconia 22 product that was from someone that the doctor</p> |
| <p style="text-align: right;">Page 230</p> <p>1 lab? 2 A. I do. 3 Q. It looks like on the front page of 4 Exhibit 145 you wrote to them because they had a 5 crown they were calling Zir-Brux. 6 A. This one's Zir-Brux. 7 Q. Earlier we had R-brux? 8 A. Correct now we have Zir-Brux. 9 Q. Now we have Z-brux; correct? 10 A. Correct. 11 Q. Because there's no more communication, do 12 you know what happened with assured? 13 A. They stopped using that. They came up 14 with their own mark. 15 Q. Do you know whether they respond inspect 16 anyway claiming they wanted to keep using it or 17 should be allowed to keep using it or anything 18 like that? 19 A. I think that they would like to have used 20 it, but then, again, they don't even make these 21 crowns in the United States. I think they came 22 from Taiwan. It just wasn't anything we were</p> | <p style="text-align: right;">Page 232</p> <p>1 white know and he could maybe put two ask two 2 together. These people never do that just like 3 Keating never did. 4 Q. I'm sorry. Keating never did what? 5 A. Never disclosed the material he was using 6 when he was doing the advertising he never said 7 KDZ bruxer made from blocks from 3 M. 8 Q. And would that have made a difference in 9 your assessment whether there was a likelihood of 10 confusion? 11 A. Not necessarily. I think it would have 12 showed that at least a dentist would have had a 13 fighting chance of knowing there might be 14 something more to should similarity in the park 15 than obvious on its face. 16 Q. Do you think dentists care very deeply 17 about where the zirconia comes from in the full 18 contour -- 19 A. Some certainly do. I don't know how many 20 dentists, but I know more and more states are 21 actually passing laws requiring dental 22 laboratories to disclose the material they use,</p> |

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1 where it's made, and not just the crowns if
2 they're made here but even the material that it's
3 made of which you then can tell where that's from
4 also. Some states you have to do that and put it
5 on the invoices that you send the crowns back.
6 It's all in response to fears about stuff from
7 China that's not properly controlled and might
8 have lead in it even. Nothing to do necessarily
9 with zirconia crowns but definitely is enough of a
10 concern among someone, maybe the public, maybe
11 politicians more than dentists, but it's
12 definitely a growing trend.
13 Q. Next I'll show you a document the court
14 reporter has marked as Exhibit 146, bears
15 production Nos. GL 241 page 16 of 99 through
16 page 19 of 99.
17 (Exhibit No. 146 was marked for
18 identification.)
19 BY MR. JANKOWSKI:
20 Q. It appears to be a communication with
21 China dental outsourcing, Inc.
22 A. I remember that.

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1 Q. Do you remember writing to China dental
2 outsourcing, Inc.?
3 A. I do.
4 Q. What do you recall about writing to them?
5 A. I remember trying to find out who to
6 write to.
7 Q. It looks like you found somebody.
8 A. Yeah, it looks like I figured it out.
9 Some of these places are pretty well cloaked. It
10 looked like I even would have been able with
11 Google Maps to find a picture of the factory that
12 it was coming from. They look like a pretty big
13 outfit too.
14 Q. On the front page of Exhibit 146 you
15 indicate that their mark was bruxer, b-r-u-x-e-r,
16 all zirconia; correct?
17 A. True.
18 Q. So, again, the similarity that's of a
19 concern to Glidewell is the use of bruxer;
20 correct?
21 A. Especially when used as a mark.
22 Q. And I think this is the only

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1 communication I saw with this entity. Did they
2 stop using the name?
3 A. They stopped using the name. If this is
4 the only thing you have, then this is the only
5 communication. I thought we got something back
6 from them saying okay, won't do it again, but I
7 don't see that here; so I don't know whether they
8 ever wrote anything back or not but they did stop
9 using it. They couldn't resist using the word
10 bruxer if I remember. I think they changed it. I
11 think they put on their site good for bruxers.
12 Q. Similar to what Glidewell says ideal for
13 bruxers?
14 A. Sort of. I don't know if that's even on
15 our site anymore. I'd have to look. I know that
16 was the initial marketing campaign to indicate
17 something durable even though it was all ceramic.
18 Q. Okay next I'm going to show you what's
19 been marked as Exhibit 147, bearing production
20 Nos. GL 241, 71 of 99 through 97 of 99.
21 (Exhibit No. 147 was marked for
22 identification.)

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1 BY MR. JANKOWSKI:
2 Q. This appears to be communication with
3 showcase dental laboratories.
4 A. I remember them. Sure. It's getting
5 more recent here.
6 Q. The first letter here looks like it was
7 written in January, 2012; correct?
8 A. Yes.
9 Q. We're getting more recent in time as we
10 go through the exhibits.
11 A. It looks like January 10 was the first
12 letter.
13 Q. And looking on the page bearing
14 production No. Page 77 of 99, it looks like their
15 mark that was of a concern to you was Zir-Bruxer
16 crowns. Z-i-r-B-r-u-x-e-r crown; correct?
17 A. That is true and it looks like they also
18 were pirating an image of the BruxZir crown for
19 their advertising. Even they took the name even.
20 They didn't even take the name off it. They
21 actually have our trademark name right next to it.
22 Q. An image that they -- an image associated

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| <p style="text-align: right;">Page 237</p> <p>1 with Glidewell that Glidewell used in their 2 materials? 3 A. Not only that it's our trademark. It 4 would have been something probably plucked right 5 trying to ride our site or advertising they didn't 6 even that I the name. 7 Q. You're looking on page 97 of 99, the last 8 page? 9 A. Yes. 10 Q. I see. 11 A. It looks like the three crowns is also in 12 their own advertising where they have it next to 13 zir con. I think showcase might also be a show 14 case for foreign made crowns possibly from China. 15 Q. So the image -- the way I interpret this 16 last page is you attached the image with the 17 BruxZir at the bottom to show the copyrighted 18 image that they cut and paste into their thing? 19 A. It says right here it's plucked off of 20 something. 21 Q. In other words, I don't think the image 22 there that has BruxZir on the last page --</p> | <p style="text-align: right;">Page 239</p> <p>1 A. I see that. 2 Q. Then as you did with the other dental 3 labs you wrote back explaining why it's 4 confusingly similar to Glidewell; correct? 5 A. That's true. 6 Q. And ultimately do you know what happened 7 with this particular third party? 8 A. Well, interestingly enough it's right 9 here and it's from their website which is part of 10 the package which is I think interesting because 11 they actually printed the infringement letter on 12 their site as a way to acknowledge the fact that 13 they used to use a mark that they decided not to 14 use anymore and here's why. So they printed my 15 letter and they put my name for all posterity. 16 Q. There it is on the front page of the 17 exhibit? 18 A. It's the front page of this exhibit. I 19 think of it more as maybe the back page of their 20 site. It's not something that was on the -- their 21 website the minute you pull it up, but it was in 22 their website somewhere and I remember seeing that</p> |
| <p style="text-align: right;">Page 238</p> <p>1 A. You know what that might be right. Maybe 2 it's to show where they got -- I bet that's right. 3 They plucked the picture -- they erased the name 4 and put it with this advertisement for zir can it 5 looks like. Check dock I can't really read the 6 rest of the print. The e-mail could have been 7 large and they could have seen whatever it was. 8 Somewhere or another here I think they also were 9 using a name somewhere zir bruxer crown. 10 Q. Right. 11 A. I don't know where that shows up on here 12 because it's too small. I assume it's in that 13 block. 14 Q. Your letter makes reference to it? 15 A. Yes. 16 Q. So they must have been using it. If you 17 look on page 76 of 99, they pushed back like 18 fusion pushed back and Pittman pushed back; 19 correct? You see how they're now referencing 20 Wikipedia's entry for bruxism and the reference to 21 a bruxer as somebody who suffers from bruxism? Do 22 you see that?</p> | <p style="text-align: right;">Page 240</p> <p>1 and thinking oh, that's interesting. That's never 2 happened before. Maybe someone in some damning 3 way like look what they said but it seemed to me 4 like they were not too judgmental about the whole 5 thing. They seemed to acknowledge the fact that 6 it was a mark that was confusingly similar and 7 they certainly had other options to use and they 8 decided to do that. 9 Q. At the bottom of the front page it looks 10 like they changed their name to full contour 11 zirconia? 12 A. I'd have to see that on here, but I 13 wouldn't be surprised if that's what you're 14 looking at. We have hereby changed the -- yeah, 15 definitely. That isn't really much of a mark. 16 Q. But it certainly -- 17 A. It's acceptable. 18 Q. Acceptable to Glidewell? 19 A. Definitely. 20 Q. You can put that down. Let me show you 21 what's been marked as Exhibit 148, bearing 22 production Nos. 241 pages 1 of 99 through 3 of 99.</p> |

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| <p style="text-align: right;">Page 241</p> <p>1 A. To Sarah Wang.</p> <p>2 Q. Right. This is communication that</p> <p>3 appears to have been sent in March of 2012 to</p> <p>4 Sarah Wang?</p> <p>5 A. To ADL dental lab from the looks of the</p> <p>6 CC.</p> <p>7 Q. Right. Advanced dental laboratory. Does</p> <p>8 that name ring a bell?</p> <p>9 A. China. If I look into this further,</p> <p>10 somehow something gave me the clue that I was</p> <p>11 writing to another organization that was selling</p> <p>12 crowns from China. My attachment on the back</p> <p>13 there seems to even have some kind of address from</p> <p>14 China.</p> <p>15 Q. On the front page of the exhibit in this</p> <p>16 example it looks like the lab is using BruxZir as</p> <p>17 their mark as one of their products; is that</p> <p>18 correct?</p> <p>19 A. That's true. They're actually using the</p> <p>20 mark spelled exactly like our own trademark.</p> <p>21 Q. And what happened after this? Do you</p> <p>22 know I don't see any other communications. Did</p> | <p style="text-align: right;">Page 243</p> <p>1 can get from them are PFMs, FMCs, IPS e.max, and</p> <p>2 zirconia and BruxZir. Who knows if they even</p> <p>3 have IPS e.max. I assume they do but we know they</p> <p>4 didn't have BruxZir.</p> <p>5 Q. Okay. Do you know who forwarded you that</p> <p>6 e-mail from Sarah Wang?</p> <p>7 A. I don't, no. It was a dental laboratory.</p> <p>8 Q. You don't recall which one?</p> <p>9 A. I don't remember who it was but it could</p> <p>10 have been any of 15,000 dental laboratory.</p> <p>11 Q. But there's not 15,000 who had be likely</p> <p>12 to be forwarding you e-mails like that; correct?</p> <p>13 A. Could be. I don't know why not.</p> <p>14 Q. You think it was Mark Jackson?</p> <p>15 A. Doubt it. I don't think it was. I think</p> <p>16 if it was, I'd remember that.</p> <p>17 Q. Okay. I'll show you what the court</p> <p>18 reporter's marked as Exhibit 149 bearing</p> <p>19 production Nos. GL 241, page 50 of 99 through 53</p> <p>20 of 99.</p> <p>21 (Exhibit No. 149 was marked for</p> <p>22 identification.)</p> |
| <p style="text-align: right;">Page 242</p> <p>1 they change the name?</p> <p>2 A. They changed the name.</p> <p>3 Q. Let me remember here. I think -- you</p> <p>4 know, I don't know what they're doing. I'd have</p> <p>5 to go and see if I can even find this site. I</p> <p>6 think what this was was something that was given</p> <p>7 to us by a lab that received it as a promotion</p> <p>8 because they were being marketed to as a</p> <p>9 laboratory that makes crowns for laboratories, and</p> <p>10 they were obviously making the assertion that they</p> <p>11 were providing our material to make a crown to</p> <p>12 other labs, and this lab, whoever gave it to us,</p> <p>13 would have turned us on to it because that's what</p> <p>14 it looks like this is because there's a copy on</p> <p>15 the back of an e-mail communication there?</p> <p>16 Q. The one from Sarah Wang?</p> <p>17 A. Exactly. It's from and the subject and</p> <p>18 the date is it's just addressed to dear friend.</p> <p>19 So that dear friend was who knows how many dental</p> <p>20 laboratories in the United States that don't have</p> <p>21 a mill and they don't provide this product. There</p> <p>22 it is right there. Their main products that you</p> | <p style="text-align: right;">Page 244</p> <p>1 THE WITNESS: Dominion milling center.</p> <p>2 BY MR. JANKOWSKI:</p> <p>3 Q. Right. Do you recall that second</p> <p>4 correspondence to dominion?</p> <p>5 A. I do.</p> <p>6 Q. And this particular correspondent</p> <p>7 actually attaches some invoices it looks like and</p> <p>8 it looks like they're using a mark which is</p> <p>9 BruxZir spelled in a different way which is</p> <p>10 B-r-u-x-z-e-r; correct?</p> <p>11 A. It's something they would have been able</p> <p>12 to tell. Obviously they did it. If I had the</p> <p>13 e-mail I could blow it up but boy that's hard to</p> <p>14 read. I probably say in the letter; right.</p> <p>15 Q. You do.</p> <p>16 A. Okay. Yeah, B-r -- this didn't print</p> <p>17 outright and it's probably just the software.</p> <p>18 Probably should have been in quote marks but it</p> <p>19 says B-r-u-x-z-e-r, correct.</p> <p>20 Q. Yes I think the --</p> <p>21 A. In fact, I can see where it says clients</p> <p>22 up there it changed the hyphen to a question mark</p> |

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| <p style="text-align: right;">Page 245</p> <p>1 too. Wherever you see a question mark it looks 2 like it should be a quote mark. That's through 3 that whole letter there. 4 Q. And you got an enthusiastic response from 5 Scott on the first page of the exhibit. 6 A. Oh, yeah. 7 Q. Howdy Keith with an exclamation mark. Do 8 you remember getting that response? 9 A. Sort of. It hasn't been that long ago. 10 I remember old dominion. 11 Q. He makes reference to a bruxer crown with 12 his spelling B-r-u-x-z-e-r? 13 A. I think I am remembering. This is I 14 think if I'm not mistaken this is a la be where if 15 you were to go on their site it looked like a 16 family transmission like data was the lab owner or 17 a dentist and his son or them was a lab guy and 18 his son was a lab guy. This is what I'm 19 remembering now obviously if anyone would know 20 that wasn't true it would be a lab guy. (***) 21 CHECK ***) Then he said he would stop using it it 22 looks like because I'm saying thank you for your</p> | <p style="text-align: right;">Page 247</p> <p>1 Q. What do you recall about it? 2 A. Let's see if there's anything in 3 particular here that jumps out. I've got 4 something here I've attached. That is wring a 5 bell. I do remember a little bit more about this. 6 You can't really read that letter too much, but it 7 was evidence of the fact they knew who we were -- 8 this is as I remember it -- and had called and 9 asked about buying blanks for use in making 10 crowns. It seemed to me at the time they 11 obviously knew the owner of the mark and and we 12 knew about that because we had immortalized that 13 in the system there that they had communicated 14 with us. 15 Q. In this instance based on your letter, it 16 looks like they were using the name full zirconia 17 and then in parentheses bruxers spell 18 B-r-u-x-Z-i-r; correct? 19 A. Correct. 20 Q. So this is another instance where they 21 were word for word or letter for lettered I should 22 say using the register mark of Glidewell; correct?</p> |
| <p style="text-align: right;">Page 246</p> <p>1 prompt response we certainly appreciate your 2 understanding. He said they'd gladly change. 3 They changed it to FCZ. 4 Q. He basically says the name is a reference 5 to patients with bruxism; correct but they'll 6 change the name anyway. Do you have any more 7 communications after this? 8 A. No. 9 Q. Next I'll have you look at Exhibit 150 10 bearing production Nos. GL 241 page 20 of 99 11 through 24 of 99. 12 (Exhibit No. 150 was marked for 13 identification.) 14 BY MR. JANKOWSKI: 15 Q. Appears to be communications with dental 16 Dentopia or Dentopia dental lab? 17 A. That does sound familiar. I think that's 18 fairly recent too. 19 Q. Right. These communications are looks 20 like in August, 2012. Do you recall these e-mail 21 exchanges? 22 A. I remember Dentopia.</p> | <p style="text-align: right;">Page 248</p> <p>1 A. That is true. I don't know if we can 2 tell from this where exactly they're from. 3 MR. TACHNER: Virginia. 4 THE WITNESS: Oh, okay. As far as their 5 crowns go. 6 BY MR. JANKOWSKI: 7 Q. Now -- 8 A. I'm not sure if they're really made in 9 Virginia I don't know what I knew back then. I 10 guess it would be this e-mail communication if I 11 could read it closer might tell me something if 12 they were communicating from the United States or 13 a foreign country. I don't remember maybe all 14 this on the bottom. Company name there's an it 15 looks like a dot com address. I am a dental 16 laboratory -- I would like to become an authorized 17 and then they're spelling it the exact same way, 18 BruxZir -- I can't read the rest. It's smeared. 19 I guess they want to know if they become an 20 authorized and then spelling it our way, if they 21 could use the word. It looks like they just 22 decided to use the word anyway without ever buying</p> |

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1 our blocks. I'm not quite sure what country
2 they're from, but it could be the United States.
3 Q. Well, Dentopia is in Virginia; correct?
4 A. I realize that, but you get the companies
5 here locally but they're actually selling crowns
6 made from other countries. I don't know if that's
7 their case or not.
8 Q. Do you know what happened with Dentopia
9 after your correspondence with them on August 31,
10 2012?
11 A. Well, it looks to me like they decided
12 not to use it from that. I have to read his
13 letter down below here to verify that but it looks
14 like they decided to stop using the mark there in
15 their advertising.
16 Q. Right. What they say is BruxZir is a
17 common name in the dental field and they say we
18 attempted to contacted Glidewell regarding the use
19 of the term BruxZir before we started the
20 promotion. We didn't receive any response. Do
21 you see that?
22 A. I do.

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1 Q. Do you recall them ever communicating
2 with you in the past about the name?
3 A. Yes, that was what was attached there it
4 was evidence about the fact they queried us and we
5 replied back. It was pretty much evidence of the
6 fact what he was saying was not correct. He said
7 that anyway.
8 Q. To your knowledge, they stopped using the
9 name?
10 A. To my knowledge they did.
11 Q. Let me hand happened you what's been
12 marked Exhibit 151 bearing production Nos. GL
13 21510 of 99 through 15 of 99.
14 A. Okay.
15 (Exhibit No. 151 was marked for
16 identification.)
17 MR. TACHNER: Is this the last one?
18 MR. JANKOWSKI: This is the last one of
19 these, yeah.
20 THE WITNESS: I'm glad it wasn't that
21 many labs.
22 ///

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1 BY MR. JANKOWSKI:
2 Q. Mr. Allred this appears to be a
3 communication in September, 2012, with Barth
4 Dental laboratory. Do you recall that?
5 A. As close in time as it is, I probably
6 will if I look at it closer. Maybe these
7 attachments will -- something's starting to ring a
8 bell here. Oh, yes. This was pretty recent.
9 This was an odd one.
10 Q. Why do you say that?
11 A. Note, your signature image is not the
12 property of dentist ry today. It is the property
13 of assured DL. If you remember this hashings
14 back to an earlier communication with assured DL
15 where it showed their use of the mark Zir-Brux,
16 and they had a picture of a crown, and if you --
17 this was on their web, and, in fact, if you tabbed
18 on the image that they were using, it actually
19 went to a dentist ry today article that talked
20 about the introduction of Zir-Brux by authentic
21 dental lab. So I thought that was interesting
22 that they were employing a confusingly similar

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1 mark to ours and at the same time were passing on
2 a picture that had been provided by assured to
3 dentist ry today for their product. And also I
4 think -- I'd have to go through this and refresh
5 my memory anew, but it seemed to me they were miss
6 quoting some information from a Dr. Christianson.
7 I see some stuff. I see his name. It's kind of
8 coming back to me. Frankly, we'd have to go there
9 it point by point to find out what I wrote.
10 Whatever it was they used someone else's picture,
11 they used a confusingly similar mark and they
12 rewrote someone's review of our material in some
13 way to satisfy their own use of their product.
14 Q. This seems to be a lot more information
15 than you usually provided with your opening
16 letter; correct?
17 A. Only because more existed. Usually it's
18 some kind of use of the mark that we would like to
19 let them know we've seen and that's been brought
20 to our attention and we'd like them to stop using
21 it. This particular one just seemed to have more
22 and more. The more you into the it. So I put

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| <p style="text-align: right;">Page 253</p> <p>1 every instance of it.</p> <p>2 Q. And how did Barth lab respond to this?</p> <p>3 A. I don't know that they have. Maybe</p> <p>4 that's why I don't remember too well. I don't</p> <p>5 know if they've changed their site. I don't</p> <p>6 remember looking to see if they changed. I don't</p> <p>7 know if they wrote me back. It's pretty recent</p> <p>8 and probably something I ought to check up on.</p> <p>9 September 26, it looks like, 2012.</p> <p>10 Q. So you don't recall as you sit here</p> <p>11 rightly now?</p> <p>12 A. I don't recall looking to see and</p> <p>13 noticing they had stopped doing all these things.</p> <p>14 There may have though.</p> <p>15 Q. Very quickly these aren't new exhibits</p> <p>16 but I want to put a couple exhibits --</p> <p>17 A. We're done with this one here.</p> <p>18 Q. Yes, you can put that one aside. Let me</p> <p>19 just show you previously marked Exhibit 93.</p> <p>20 Here's an example from Glidewell's website that</p> <p>21 shows the use of the trademark with the circle R;</p> <p>22 correct? Do you see that on the, site?</p> | <p style="text-align: right;">Page 255</p> <p>1 Q. This was printed out on October 22.</p> <p>2 A. I saw that there.</p> <p>3 Q. This is from Glidewell's own website?</p> <p>4 A. Oh, okay. Constantly having to look at</p> <p>5 this stuff.</p> <p>6 Q. So you agree that's not a proper use of</p> <p>7 the circle R?</p> <p>8 A. No, no, we're not doing it. We're not</p> <p>9 doing it for that.</p> <p>10 Q. What do you mean you're not doing?</p> <p>11 A. Well, the companies use that all the time</p> <p>12 when they have a circle R in Europe and they use</p> <p>13 their circle R trademark. We're not doing that</p> <p>14 we're just keeping it TM.</p> <p>15 Q. So it should say TM?</p> <p>16 A. By the way we're doing it true it should</p> <p>17 be TM on that.</p> <p>18 Q. Let me show you what's been previously</p> <p>19 marked Exhibit 98. This is another prinout from</p> <p>20 Glidewell Laboratories' website. This is for a</p> <p>21 BruxZir mill. I think you testified earlier you</p> <p>22 don't have a trademark registration pending for</p> |
| <p style="text-align: right;">Page 254</p> <p>1 A. Yes.</p> <p>2 Q. And that's, in fact, for a dental</p> <p>3 restoration made with the all zirconia -- it's an</p> <p>4 all zirconia crown basically; correct?</p> <p>5 A. Well, bridge looks like here.</p> <p>6 Q. Or a bridge. But it's a dental</p> <p>7 restoration?</p> <p>8 A. Definitely.</p> <p>9 Q. Okay. And I'll then show you previously</p> <p>10 marked Exhibit 97. So now here's an example from</p> <p>11 Glidewell's website here's an all now of the</p> <p>12 dental ceramic. This would be the product that's</p> <p>13 associated with the pending application correct</p> <p>14 that's not yet registered?</p> <p>15 A. That's true.</p> <p>16 Q. Now, it uses a circle R; right?</p> <p>17 A. I see that there.</p> <p>18 Q. Is that a correct use of the circle R?</p> <p>19 A. It wouldn't be by what we do unless this</p> <p>20 was from Germany or something. It looks like it's</p> <p>21 our homepage I don't know what date that was or</p> <p>22 how far back it was.</p> | <p style="text-align: right;">Page 256</p> <p>1 BruxZir in connection with with this type of</p> <p>2 equipment; correct?</p> <p>3 A. That would be incorrect too. That should</p> <p>4 be a TM.</p> <p>5 Q. That should be a TM as well. Now finally</p> <p>6 let me show you what's been labeled as previously</p> <p>7 as Exhibit 99. This is also printed out from the</p> <p>8 website associated with authorized BruxZir</p> <p>9 laboratories. Take a look at that. Here we see</p> <p>10 the use of the circle R again?</p> <p>11 A. True.</p> <p>12 Q. Is this the proper use of the circle R?</p> <p>13 A. I think we have been using it for that</p> <p>14 because it does stand for providing the all</p> <p>15 zirconia crowns which we do have the trademark on.</p> <p>16 Q. Right. What you're mostly doing with</p> <p>17 your authorized labs are providing the milling</p> <p>18 blanks for them to make the crowns themselves?</p> <p>19 A. That's true.</p> <p>20 Q. So they're allowed under the agreement</p> <p>21 you have with them to use the BruxZir name --</p> <p>22 A. True.</p> |

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1 Q. -- with their crowns; correct?

2 A. That's true just like if they used
3 someone else's material.

4 Q. They can use a circle R with that is your
5 understanding because it's the crowns that they're
6 making that have the BruxZir name on it?

7 A. Exactly just like if they provided an IPS
8 e.max crown or Lava crown, same sort of thing.

9 Q. And that would be, I'm sorry, the
10 registration is Class 10; correct?

11 A. Correct.

12 Q. Okay. It's in connection with Class 10
13 that the authorized labs are using the circle R;
14 correct?

15 A. That's true.

16 Q. Okay. Well, thank you very much
17 Mr. Allred. I appreciate your time. I have no
18 further questions.

19 MR. TACHNER: I have no questions.

20 MR. JANKOWSKI: Off the record.
21
22